

ATTACHMENT 7

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1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS MDL No. 2002
ANTITRUST LITIGATION 08-MD-02002

THIS DOCUMENT APPLIES TO:
ALL DIRECT PURCHASER ACTIONS

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DEPOSITION OF
TIMOTHY BEEBE
Taken Thursday, July 18, 2013
Scheduled for 8:30 a.m.

Reported by: Dana Anderson-Linnell

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<p style="text-align: right;">2</p> <p>1 DEPOSITION OF TIMOTHY BEBEE taken on Thursday, 2 July 18, 2013, commencing at 8:31 a.m. at the 3 offices of Leonard, Street and Deinard, 150 South 4 Fifth Street, Suite 2300, Minneapolis, Minnesota, 5 before Dana S. Anderson-Linnell, a Shorthand 6 Reporter and Notary Public in and of the State of 7 Minnesota. 8 ***** 9 10 APPEARANCES 11 12 On Behalf of the Direct Action Plaintiffs: 13 John F. Kinney, Esquire 14 JENNER & BLOCK, LLP 15 353 North Clark Street 16 Chicago, Illinois 60654-3456 17 Phone: 312.222.9350 18 Email: jkinney@jenner.com 19 20 (Appearances continued on the next page.) 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of United Egg Producers and 4 United States Egg Marketers: 5 Evan W. Davis, Esquire (via telephone) 6 PEPPER HAMILTON, LLP 7 3000 Two Logan Square 8 Eighteenth and Arch Streets 9 Philadelphia, Pennsylvania 19103-2799 10 Phone: 215.981.4245 11 Email: davisew@pepperlaw.com 12 13 On Behalf of Sparboe Farms Inc.: 14 Claire V.J. Joseph, Esquire 15 Troy J. Hutchinson, Esquire (via telephone) 16 BRIGGS AND MORGAN, PA 17 2200 IDS Center 18 80 South Eighth Street 19 Minneapolis, MN 55402 20 Phone: 612.977.8400 21 Email: cjoseph@briggs.com 22 thutchinson@briggs.com 23 24 (Appearances continued on the next page.) 25</p>
<p style="text-align: right;">3</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of the Direct Purchaser Plaintiff 4 Class: 5 Ronald J. Aranoff, Esquire 6 Cory A. Greenbaum, Esquire 7 BERNSTEIN LIEBHARD, LLP 8 10 East 40th Street 9 New York, New York 10016 10 Phone: 212.779.1414 11 Email: aranoff@bernlieb.com 12 cgreenbaum@bernlieb.com 13 14 On Behalf of the Indirect Purchaser 15 Plaintiffs: 16 Merrick Scott Rayle, Esquire 17 LOVELL, STEWART, HALEBIAN, JACOBSON, LLP 18 61 Broadway, Suite 501 19 New York, New York 10006 20 Phone: 415.533.5316 21 Email: msrayle@sbcglobal.net 22 23 (Appearances continued on the next page.) 24 25</p>	<p style="text-align: right;">5</p> <p>1 APPEARANCES (continued): 2 3 On Behalf of Michael Foods Inc.: 4 William L. Greene, Esquire 5 LEONARD, STREET AND DEINARD, PA 6 150 South Fifth Street, Suite 2300 7 Minneapolis, Minnesota 55402 8 Phone: 612.335.1568 9 Email: william.greene@leonard.com 10 11 On Behalf of Michael Foods Inc.: 12 Carrie M. Anderson, Esquire (via telephone) 13 WEIL, GOTSHAL & MANGES, LLP 14 1300 Eye Street, NW, Suite 900 15 Washington, District of Columbia 20005 16 Phone: 202.682.7231 17 Email: carrie.anderson@weil.com 18 19 (Appearances continued on the next page.) 20 21 22 23 24 25</p>

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2		2	Arvold of Veritext.
3	Exhibit 24 - Cover email from Gene Gregory to	3	Today's date is July 18, 2013. And
4	various individuals with a cc to Al Pope and	4	the time is approximately 8:31 a.m.
5	Chad Gregory, Bates MFI0002839 to 2845 257	5	This deposition is being held at
6		6	the office of Leonard, Street and Deinard
7	Exhibit 25 - Document titled United Egg	7	located at 150 South Fifth Street,
8	Producers Animal Husbandry Guidelines for	8	Minneapolis, Minnesota. The caption of the
9	U.S. Egg Laying Flocks, 2008 Edition, Bates	9	case is In Re: Processed Egg Products
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12	Exhibit 26 - Amended Deposition Notice of	12	Pennsylvania. The name of the witness is
13	Tim Bebee 268	13	Timothy Bebee.
14		14	At this time the attorneys will
15	Exhibit 27 - Email from Gregg Ostrander to	15	identify themselves and the parties they
16	various individuals dated April 1, 2002,	16	represent. After which, our court reporter,
17	Bates MFI0111951 272	17	Dana Anderson of Veritext, will swear in the
18		18	witness and we can proceed.
19	Exhibit 28 - Email from Rich Dutton dated	19	MR. KINNEY: Good morning,
20	November 15, 2001, Bates MFI0111210 277	20	Mr. Bebee. My name is John Kinney from Jenner
21		21	and Block in Chicago. I represent the Direct
22	Exhibit 29 - Document titled MFI Animal	22	Action Plaintiffs.
23	Welfare Program Summary, Bates MFI0281887 284	23	MR. ARANOFF: Ronald Aranoff,
24		24	Bernstein Liebhard LLP, 10 East 40th Street,
25		25	New York, New York 10016 on behalf of the

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<p>1 Direct Purchaser Plaintiff Class.</p> <p>2 MR. GREENBAUM: Cory Greenbaum,</p> <p>3 Bernstein Liebhard, also representing the</p> <p>4 Direct Purchaser Plaintiff Class.</p> <p>5 MR. RAYLE: Merrick Rayle, Lovell,</p> <p>6 Stewart, Halebian, Jacobson, one of the</p> <p>7 attorneys representing the Indirect Purchaser</p> <p>8 Plaintiffs.</p> <p>9 MS. JOSEPH: Claire Joseph, Briggs</p> <p>10 and Morgan here representing Sparboe Farms</p> <p>11 Inc.</p> <p>12 MS. WOLSKI: Carolyn Wolski. I'm</p> <p>13 vice president and general counsel of Michael</p> <p>14 Foods.</p> <p>15 MR. GREENE: And William Greene on</p> <p>16 behalf of Michael Foods from the law firm of</p> <p>17 Leonard, Street and Deinard in Minneapolis.</p> <p>18 THE COURT REPORTER: On the phone?</p> <p>19 MS. ANDERSON: Carrie Anderson with</p> <p>20 Weil, Gotshal and Manges on behalf of Michael</p> <p>21 Foods.</p> <p>22 MR. DAVIS: Evan Davis from Pepper</p> <p>23 Hamilton on behalf of United Egg Producers and</p> <p>24 United States Egg Marketers.</p> <p>25 MR. HUTCHINSON: Troy Hutchinson on</p>	<p>1 are preserved?</p> <p>2 MR. GREENE: Yes.</p> <p>3 MR. KINNEY: Okay. And then -- and</p> <p>4 I don't want to spend much, if any, time, but</p> <p>5 we -- we being you and Ron Aranoff and Cory</p> <p>6 and Merrick and I have had conversations over</p> <p>7 the past couple of days regarding Mr. Bebee's</p> <p>8 deposition. We've raised certain concerns.</p> <p>9 You responded. We all stated our positions.</p> <p>10 And I think those are stated in</p> <p>11 correspondence, and we'll leave that as it is</p> <p>12 unless anybody wants to put anything more on</p> <p>13 the record.</p> <p>14 MR. GREENE: That's fine with me.</p> <p>15 MR. KINNEY: All right.</p> <p>16 MR. GREENE: One other thing. I</p> <p>17 believe we also typically have a stipulation</p> <p>18 that an objection for one is an objection for</p> <p>19 all so that we don't have to have everybody</p> <p>20 repeating the same objection.</p> <p>21 MR. KINNEY: I think that's fine.</p> <p>22 All right.</p> <p>23 BY MR. KINNEY:</p> <p>24 Q. All right. Mr. Bebee, could you state</p> <p>25 and spell your name for the record.</p>
19	21
<p>1 behalf of Defendant Sparboe Farms Inc.</p> <p>2 MR. YODER: Bryce Yoder on behalf</p> <p>3 of Ohio Fresh Eggs from Keating, Muething and</p> <p>4 Klekamp.</p> <p>5 MS. ALLEN: Karri Allen from</p> <p>6 Porter, Wright, Morris and Arthur on behalf of</p> <p>7 Rose Acre Farms.</p> <p>8 MR. KENNEDY: Travis Kennedy on</p> <p>9 behalf of Moark LLC and Norco Ranch.</p> <p>10</p> <p>11 TIMOTHY BEBEE,</p> <p>12 called as a witness, being first duly sworn, was</p> <p>13 examined and testified as follows:</p> <p>14</p> <p>15 EXAMINATION</p> <p>16</p> <p>17 BY MR. KINNEY:</p> <p>18 Q. Good morning, Mr. Bebee. As I said</p> <p>19 before, my name is John Kinney from Jenner and</p> <p>20 Block in Chicago, and I represent the Direct</p> <p>21 Action Plaintiffs.</p> <p>22 MR. KINNEY: Before be start with</p> <p>23 your examination, just two preliminaries.</p> <p>24 Bill, can we have an agreement that</p> <p>25 all objections other than form and privilege</p>	<p>1 A. Timothy J. Bebee, B-e-b-e-e.</p> <p>2 Q. Have you ever had your deposition taken</p> <p>3 before?</p> <p>4 A. Yes.</p> <p>5 Q. How many times?</p> <p>6 A. Once.</p> <p>7 Q. And when did that happen?</p> <p>8 A. It was in the mid '80s approximately.</p> <p>9 Q. All right. And what was the subject</p> <p>10 matter of your deposition?</p> <p>11 A. It was a manure handling fertilization</p> <p>12 contractual situation.</p> <p>13 Q. And what party were you testifying for?</p> <p>14 A. On behalf of an egg company.</p> <p>15 Q. And which egg company?</p> <p>16 A. It was M.G. Waldbaum.</p> <p>17 Q. Have you testified under oath in any</p> <p>18 other proceeding or matter since that</p> <p>19 deposition in the 1980s?</p> <p>20 A. No.</p> <p>21 Q. Okay. All right. It might be helpful</p> <p>22 then to go over some of the housekeeping kinds</p> <p>23 of things for purposes of your deposition.</p> <p>24 So -- and probably one of the most important</p> <p>25 things is that you must respond orally to</p>

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<p>1 questions. It doesn't help the court reporter 2 if you shake your head or say -- you know, 3 it's best to be as oral as possible so that 4 the court reporter can take down your 5 response. Also to make life easier for our 6 court reporter, it's best if we try not to 7 speak over each other. So I will try and not 8 speak at the same time as you do. And if you 9 could try and do the same thing, it will make 10 life easier for the court reporter and we'll 11 get a cleaner transcript. 12 If you don't understand a question that I 13 or the other lawyers ask, be sure to let us 14 know, and we'll try and respond to whatever 15 your difficulties are, try and ask you a 16 better question. I'm sure that our questions 17 aren't always perfect. 18 As far as breaks, you can take a break at 19 any time, just let us know. We try and time 20 them so it doesn't interfere with a particular 21 subject that we're covering. The only thing 22 that we do ask is that you not take breaks 23 while a question is pending. We have to get 24 an answer, and then you are free to take a 25 break. And then what we were talking about in</p>	<p>1 Q. Does the -- do those entities, are they 2 known as divisions, or did they have any name 3 within Michael Foods? I think I've seen some 4 reference to the Egg Products Co., company, 5 and there's an entity Crystal Farms. What are 6 those? 7 A. Correct, just subsidiaries of Michael 8 Foods. 9 Q. All right. And the egg products co. is 10 the one that's responsible for the production 11 of eggs and processed egg products? 12 A. Yes. 13 Q. All right. And what's Crystal Farms 14 responsible for? 15 A. Refrigerated distribution. 16 Q. That's cheese and dairy products and 17 things like that? 18 A. Yes. 19 Q. Okay. And is there a name for the entity 20 that does the potato products? 21 A. Escapes me, the name of the potato 22 company does. 23 Q. Today in general I will refer to Michael 24 Foods and/or the egg products company. And if 25 there's any lack of clarity in what I'm asking</p>
23	25
<p>1 terms of objections, Mr. Greene or other 2 attorneys may make objections to certain 3 questions that we pose. And unless Mr. Greene 4 instructs you not to answer, then you should 5 answer the question subject to the objection. 6 Do you have any questions about the 7 procedures? 8 A. No, I understand. 9 Q. All right. Thank you. Who is your 10 current employer? 11 A. Michael Foods. 12 Q. And what is Michael Foods, how would you 13 describe Michael Foods? 14 MR. GREENE: Objection, vague. 15 (Indicating.) 16 THE WITNESS: It's a food 17 processing company. 18 BY MR. KINNEY: 19 Q. And is it correct that Michael Foods 20 operates in several business segments? 21 A. Yes. 22 Q. All right. And what are those business 23 segments? 24 A. Egg products, potato products, 25 refrigerated distribution.</p>	<p>1 for, just let me know and I'll try and be more 2 specific. 3 What does the egg products company do? 4 A. Produces eggs and purchases eggs and 5 processes eggs and sells egg products. 6 Q. Okay. And where is the egg products 7 company based? 8 A. Minneapolis. 9 Q. And is there a head of the egg products 10 company? 11 A. Yes. 12 Q. Who is that? 13 A. Jim Dwyer. 14 Q. How long has Mr. Dwyer been the head of 15 the egg products company? 16 A. A little bit over three years. 17 Q. And before Mr. Dwyer who was the head of 18 egg products? 19 A. Dave Johnson. 20 Q. And for approximately how long was 21 Mr. Johnson the head of egg products? 22 A. I don't recall exactly. I believe it was 23 less than two years. 24 Q. And before Mr. Johnson? 25 A. J.D. Clarkson.</p>

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<p>1 Q. And Mr. Clarkson passed away in like 2 2006? 3 A. I don't recall exactly. 4 Q. How long was he the head of egg products? 5 A. It was a few years. I don't remember the 6 dates. 7 Q. Who is in charge today of potato 8 products? 9 A. Jim Dwyer is the president and CEO of 10 Michael Foods, he's overall in charge of the 11 companies. 12 Q. Is there an individual under Mr. Dwyer 13 who is responsible for potato products in and 14 the same thing, is there a person responsible 15 for Crystal Farms? 16 MR. GREENE: Objection, compound. 17 BY MR. KINNEY: 18 Q. Let's take them one at a time. Is there 19 a person who is responsible for the potato 20 products? 21 A. Not directly. There are general managers 22 that are in charge of different divisions. 23 Q. Well, who is the general manager for 24 potatoes? 25 A. There is not a general manager over</p>	<p>1 Q. Who else makes and sells -- 2 MR. KINNEY: Do we need to deal 3 with the ring? 4 THE COURT REPORTER: Sure. This is 5 Dana, the court reporter. Did somebody just 6 join the telephone conference? 7 MR. TAKENOUCHI: Jason Takenouchi 8 for Nu-Cal Foods. 9 THE COURT REPORTER: Go ahead, 10 Mr. Kinney. 11 MR. KINNEY: Okay. 12 BY MR. KINNEY: 13 Q. Who else makes and sells the kinds of 14 products that Michael Foods does, the kinds of 15 egg products that Michael Foods does? 16 MR. GREENE: Objection, vague and 17 lack of foundation. 18 THE WITNESS: Sunny Fresh, Cargill 19 would be the other egg products company that 20 would -- 21 BY MR. KINNEY: 22 Q. Anybody else? 23 A. Well, there are numerous companies. I 24 know that Rose Acre Farms produces some egg 25 products, Sparboe Farms produces some egg</p>
27	29
<p>1 potatoes. 2 Q. Is there a general manager for Crystal 3 Farms? 4 A. Yes. 5 Q. Who is that? 6 A. Mark Anderson. 7 Q. Anderson? 8 A. Yes. 9 Q. Who are the primary customers for the egg 10 products company? 11 MR. GREENE: Objection, lack of 12 foundation. 13 THE WITNESS: There are hundreds of 14 customers. 15 BY MR. KINNEY: 16 Q. Who is your biggest? 17 MR. GREENE: Same objection. 18 THE WITNESS: I could not tell you 19 who the biggest customer is. 20 BY MR. KINNEY: 21 Q. If you wanted to know who the biggest 22 customer is for the egg products company, who 23 would you ask? 24 A. Jim Dwyer. 25 (Tone.)</p>	<p>1 products. 2 Q. Okay. We're going to be talking at 3 different times today about an entity that's 4 known as United Egg Producers that we'll also 5 refer to as UEP. Are you familiar with that 6 entity? 7 A. Yes, I am. 8 Q. And when did Michael Foods first become a 9 UEP member? 10 A. I don't know the date exactly. It was in 11 the '70s sometimes. 12 Q. And was Waldbaum a UEP member before it 13 was acquired by Michael Foods? 14 A. Yes. 15 Q. And do you know how long Waldbaum had 16 been a UEP member? 17 A. Prior to Michael Foods being involved, is 18 that the question? 19 Q. Yes, sir. 20 A. It would have been approximately 15 years 21 off the top of my head. 22 Q. Same thing going back to the 1970s? 23 A. Yes, sir. 24 Q. All right. And is Michael Foods 25 currently a UEP member?</p>

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<p>1 A. Yes.</p> <p>2 Q. Has Michael Foods ever been a member of</p> <p>3 UEP's affiliate, U.S. Egg?</p> <p>4 MR. DAVIS: Object to the form.</p> <p>5 MR. KINNEY: I wasn't finished with</p> <p>6 the question, so you can -- you can have your</p> <p>7 objection.</p> <p>8 Who just joined the call?</p> <p>9 MR. GREENE: Did anyone just join?</p> <p>10 John, can you start your question again.</p> <p>11 BY MR. KINNEY:</p> <p>12 Q. Has Michael Foods ever been a member of</p> <p>13 UEP's affiliate, U.S. Egg Marketers?</p> <p>14 MR. DAVIS: Objection.</p> <p>15 THE WITNESS: Not to my knowledge,</p> <p>16 no.</p> <p>17 BY MR. KINNEY:</p> <p>18 Q. Putting aside membership, has</p> <p>19 UEP -- Michael Foods ever participated in a</p> <p>20 USEM export?</p> <p>21 MR. GREENE: Objection, lack of</p> <p>22 foundation.</p> <p>23 THE WITNESS: Not to my knowledge.</p> <p>24 BY MR. KINNEY:</p> <p>25 Q. When did Michael Foods first become a UEP</p>	<p>1 title?</p> <p>2 A. I'm currently a consultant.</p> <p>3 Q. And how long have you been a consultant?</p> <p>4 A. Eighteen days.</p> <p>5 Q. And 19 days ago what was your position?</p> <p>6 A. Vice president over live production, farm</p> <p>7 operations.</p> <p>8 Q. And was there a reason for your change</p> <p>9 from VP live production to a consultant?</p> <p>10 A. Yeah, I want to put my family and myself</p> <p>11 first.</p> <p>12 Q. So you can cut back on what you're doing?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And where do you live?</p> <p>15 A. Wakefield, Nebraska.</p> <p>16 Q. Is that also your work address?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And as VP live production were you based</p> <p>19 in Wakefield?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And do you understand that you're</p> <p>22 testifying today both individually and as</p> <p>23 Michael Foods' corporate representative</p> <p>24 regarding certain topics?</p> <p>25 A. Yes, sir.</p>
31	33
<p>1 Certified producer?</p> <p>2 A. It was in the summer of 2006.</p> <p>3 Q. And we'll get into the details later.</p> <p>4 But basically what does it mean to be a UEP</p> <p>5 Certified producer?</p> <p>6 A. You have agreed to the voluntary program</p> <p>7 of trading your hens according to the</p> <p>8 guidelines laid out in the UEP Certified</p> <p>9 program.</p> <p>10 Q. And is Michael Foods currently a UEP</p> <p>11 Certified producer?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And has it been a UEP Certified producer</p> <p>14 at all times since 2006?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Let's see. Is it correct you've worked</p> <p>17 for Michael Foods since Michael Foods acquired</p> <p>18 Waldbaum in, what, 1988?</p> <p>19 A. Yes, part of the company was purchased in</p> <p>20 1988. And I have worked for the company since</p> <p>21 and prior to that.</p> <p>22 Q. And that was my next question. How long</p> <p>23 had you worked for Waldbaum?</p> <p>24 A. I had worked for the company since 1980.</p> <p>25 Q. And what's your current position or</p>	<p>1 Q. And let me show you what we've marked</p> <p>2 previously as Exhibit W.</p> <p>3 (Exhibit W marked for</p> <p>4 identification.)</p> <p>5 BY MR. KINNEY:</p> <p>6 Q. Exhibit W is a July 17, 2013 letter from</p> <p>7 William Greene to various individuals</p> <p>8 regarding this deposition.</p> <p>9 MR. ARANOFF: Sorry to interrupt.</p> <p>10 Why are we labeling this Exhibit W?</p> <p>11 MR. KINNEY: Because I didn't know</p> <p>12 how you might be numbering, and I didn't want</p> <p>13 to --</p> <p>14 MR. ARANOFF: So I didn't pre-mark</p> <p>15 anything. I'm going to have the court</p> <p>16 reporter.</p> <p>17 MR. KINNEY: You can mark them one</p> <p>18 through whatever.</p> <p>19 MR. ARANOFF: Why don't we just</p> <p>20 start with -- Bill, why don't we just start</p> <p>21 with Bebee 1 and go sequentially?</p> <p>22 MR. KINNEY: No, all of my exhibits</p> <p>23 are pre-marked with the exception of this,</p> <p>24 that's why it's marked W. Everything that you</p> <p>25 mark you can mark one and so on.</p>

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<p>1 MR. ARANOFF: Okay.</p> <p>2 BY MR. KINNEY:</p> <p>3 Q. Mr. Bebee, are the topics that you are</p> <p>4 going to cover as Michael Foods' corporate</p> <p>5 representatives ones that are identified in</p> <p>6 Exhibit W, and in particular, topics 1, 8, 10,</p> <p>7 11, 12, 13, 15 and 19?</p> <p>8 A. (Reviews document.) Yes.</p> <p>9 Q. When did anyone first discuss with you</p> <p>10 whether you would be one of the persons</p> <p>11 testifying as one of Michael Foods' corporate</p> <p>12 representatives in depositions?</p> <p>13 MR. GREENE: Object to the extent</p> <p>14 that calls for attorney-client communications.</p> <p>15 And in answering the question, I don't want</p> <p>16 you to reveal any information that you learned</p> <p>17 or discussed with counsel.</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. I'm asking you when.</p> <p>20 A. I don't recall the exact date.</p> <p>21 Q. So the question -- was it within the past</p> <p>22 couple -- you know, was it this week, last</p> <p>23 week? Was it before or after you became a</p> <p>24 consultant?</p> <p>25 A. Before.</p>	<p>1 Q. And since on or about July 1, how many</p> <p>2 discussions have you had with those</p> <p>3 individuals that you just identified regarding</p> <p>4 your acting as one of the corporate designees</p> <p>5 for Michael Foods?</p> <p>6 A. I'm sorry, since which date?</p> <p>7 Q. Since your first conversation.</p> <p>8 A. Okay. Okay. Three conversations.</p> <p>9 Q. Okay. When was the most recent one?</p> <p>10 A. Yesterday.</p> <p>11 Q. And the one yesterday was with whom?</p> <p>12 A. Bill Greene and Carrie Anderson.</p> <p>13 Q. What's your best understanding of when it</p> <p>14 was decided that you actually would testify as</p> <p>15 a corporate representative for the company?</p> <p>16 MR. GREENE: Objection, calls for</p> <p>17 speculation, lack of foundation.</p> <p>18 THE WITNESS: Early summer of this</p> <p>19 year.</p> <p>20 BY MR. KINNEY:</p> <p>21 Q. As part of the -- as part of this</p> <p>22 process, did you identify the topics that you</p> <p>23 could testify on?</p> <p>24 A. No.</p> <p>25 Q. How were the topics identified that you</p>
35	37
<p>1 Q. And you became a consultant effective</p> <p>2 what date?</p> <p>3 A. July 1st.</p> <p>4 Q. With whom did you have that discussion?</p> <p>5 MR. GREENE: He's just asking for a</p> <p>6 name, you can just give him a name. And I</p> <p>7 don't want any substance to be discussed.</p> <p>8 THE WITNESS: Carrie Wolski.</p> <p>9 BY MR. KINNEY:</p> <p>10 Q. Anybody else?</p> <p>11 A. Are you asking who it was discussed with</p> <p>12 along the way or initially?</p> <p>13 Q. Initially.</p> <p>14 A. The first time, no, it would just have</p> <p>15 been Mrs. Wolski.</p> <p>16 Q. And with whom else have you had</p> <p>17 discussions regarding your testifying as</p> <p>18 Michael Foods' corporate representative?</p> <p>19 A. Bill Greene.</p> <p>20 Q. Anybody else?</p> <p>21 A. Doug Boettge.</p> <p>22 Q. Anybody else?</p> <p>23 A. Carrie Anderson.</p> <p>24 Q. Okay. Anyone else?</p> <p>25 A. No.</p>	<p>1 would address as Michael Foods' designee?</p> <p>2 MR. GREENE: Objection, lack of</p> <p>3 foundation, calls for speculation. And also</p> <p>4 caution you, in answering you should not</p> <p>5 reveal any information discussed with counsel,</p> <p>6 either outside counsel, myself, Ms. Anderson</p> <p>7 or with Ms. Wolski.</p> <p>8 THE WITNESS: I did not decide</p> <p>9 which topics to be discussed.</p> <p>10 BY MR. KINNEY:</p> <p>11 Q. Did you provide information about the</p> <p>12 topics that you're knowledgeable about?</p> <p>13 A. Yes.</p> <p>14 Q. You are aware of the fact that certain of</p> <p>15 the topics for which you were originally</p> <p>16 designated have been eliminated?</p> <p>17 A. I am not aware of that, no.</p> <p>18 Q. You didn't know that earlier in this week</p> <p>19 you were designated to testify for additional</p> <p>20 topics and that those are not reflected in</p> <p>21 Exhibit W?</p> <p>22 A. No.</p> <p>23 Q. And...</p> <p>24 (Exhibit V marked for</p> <p>25 identification.)</p>

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<p>1 BY MR. KINNEY:</p> <p>2 Q. Let me show you what's been marked as</p> <p>3 Exhibit V, as in Victor. And it's a July 15,</p> <p>4 2013 letter from William Greene to various</p> <p>5 individuals regarding the Bebee deposition.</p> <p>6 And my question is -- first is: Have you seen</p> <p>7 Exhibit V before?</p> <p>8 A. (Reviews document.) Yes, I have.</p> <p>9 Q. All right. And are there not certain</p> <p>10 topics reflected on Exhibit V that are not</p> <p>11 reflected on Exhibit W, and in particular,</p> <p>12 topics 3, 4, 5, 6, 24 and 25?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Does that refresh your</p> <p>15 recollection that there have been certain</p> <p>16 topics that were -- for whom you were</p> <p>17 originally designated as the representative</p> <p>18 that have now been taken out?</p> <p>19 A. Yes.</p> <p>20 Q. Did you participate in discussions with</p> <p>21 Mr. Greene and others regarding the change in</p> <p>22 the topics for which you're the corporate</p> <p>23 designee?</p> <p>24 MR. GREENE: It's a yes or no</p> <p>25 question. You can answer it yes or no. But</p>	<p>1 A. Yes.</p> <p>2 Q. Are there any topics that you are going</p> <p>3 to testify to today where you're</p> <p>4 testifying -- where you're not testifying</p> <p>5 based at least on part on your personal</p> <p>6 knowledge?</p> <p>7 MR. GREENE: Objection, confusing.</p> <p>8 BY MR. KINNEY:</p> <p>9 Q. Let me explain it to you. The other way</p> <p>10 is: Are there any topics that you are going</p> <p>11 to testify to today where you had no personal</p> <p>12 knowledge and what you did was you educated</p> <p>13 yourself so that you could testify on that</p> <p>14 topic today?</p> <p>15 MR. GREENE: Same objection.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MR. KINNEY:</p> <p>18 Q. For the topics that you are the designee,</p> <p>19 are there others at Michael Foods who have</p> <p>20 knowledge or information regarding those</p> <p>21 topics?</p> <p>22 A. Yes.</p> <p>23 Q. For the topics that you are going to</p> <p>24 cover today as the corporate designee, what</p> <p>25 did you do to prepare to testify?</p>
39	41
<p>1 other than that, I don't want you to reveal</p> <p>2 any attorney-client communications.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. KINNEY:</p> <p>5 Q. Did you ask for that change?</p> <p>6 MR. GREENE: Objection. That calls</p> <p>7 for attorney-client communications.</p> <p>8 MR. KINNEY: No, it doesn't.</p> <p>9 MR. GREENE: Sure it does.</p> <p>10 MR. KINNEY: Of course not. It's a</p> <p>11 straightforward question; did he ask for it.</p> <p>12 BY MR. KINNEY:</p> <p>13 Q. Did you, Mr. Bebee, ask for that change?</p> <p>14 MR. GREENE: Right.</p> <p>15 BY MR. KINNEY:</p> <p>16 Q. I'm not asking you to get into any</p> <p>17 conversations that you had with Mr. Greene.</p> <p>18 Did you ask for that change?</p> <p>19 MR. GREENE: And I'm objecting.</p> <p>20 MR. KINNEY: Are you going to</p> <p>21 instruct him to answer or not answer?</p> <p>22 MR. GREENE: I'm going to instruct</p> <p>23 him not to answer the question.</p> <p>24 BY MR. KINNEY:</p> <p>25 Q. Do you follow your counsel's advice?</p>	<p>1 A. Couple decades of experience.</p> <p>2 Q. Did you meet with your lawyers to prepare</p> <p>3 to testify regarding those topics?</p> <p>4 A. I met with my lawyers.</p> <p>5 Q. Sure. And how many meetings did you have</p> <p>6 to prepare for your deposition?</p> <p>7 A. I believe it was three, as I earlier</p> <p>8 answered.</p> <p>9 Q. So three. I'm not sure that you said</p> <p>10 three before. So you had one yesterday?</p> <p>11 A. Yes.</p> <p>12 Q. And when were the other two?</p> <p>13 A. Had a meeting in June and a meeting I</p> <p>14 believe in late May.</p> <p>15 Q. And the meeting in June, who participated</p> <p>16 in that?</p> <p>17 A. Bill Greene and Carolyn Wolski.</p> <p>18 Q. And the one in late May?</p> <p>19 A. Bill Greene and Doug Boettge.</p> <p>20 Q. The meeting yesterday was here in</p> <p>21 Minneapolis?</p> <p>22 A. Yes.</p> <p>23 Q. All right. And the one in June was</p> <p>24 where?</p> <p>25 A. Here in Minneapolis.</p>

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<p>1 Q. And same for the one in late May?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Other than the face-to-face -- the</p> <p>4 three face-to-face meetings did you have</p> <p>5 telephone calls to prepare for your</p> <p>6 deposition?</p> <p>7 A. I don't recall any telephone calls other</p> <p>8 than to talk about a meeting timing.</p> <p>9 Q. And for the topics that you're going to</p> <p>10 cover as reflected on Exhibit W, what did you</p> <p>11 do to determine whether Michael Foods, the</p> <p>12 company, had additional or other information</p> <p>13 beyond your personal knowledge?</p> <p>14 A. I didn't do anything.</p> <p>15 Q. Okay. To prepare for your testimony as</p> <p>16 the corporate designee, did you review</p> <p>17 documents?</p> <p>18 A. Yes.</p> <p>19 Q. Were the documents ones that you</p> <p>20 identified?</p> <p>21 A. No.</p> <p>22 Q. These were ones that were shown to you by</p> <p>23 your counsel?</p> <p>24 A. Yes.</p> <p>25 Q. To prepare to testify here today, did you</p>	<p>1 participation in those topics, is that</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. All right. And do you understand that</p> <p>5 others at Michael Foods have knowledge about</p> <p>6 topics 1 and 15?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you have any understanding who, other</p> <p>9 than you, will also testify as the company's</p> <p>10 representative regarding topics 1 and 15?</p> <p>11 A. No.</p> <p>12 Q. Overall, what's your best estimate of how</p> <p>13 much time you spent to prepare to testify in</p> <p>14 your deposition?</p> <p>15 A. Twenty hours.</p> <p>16 Q. Did you participate in any search for</p> <p>17 documents, searches for documents that were</p> <p>18 requested as part of the discovery in this</p> <p>19 case?</p> <p>20 A. I provided what I made available, what</p> <p>21 existed.</p> <p>22 Q. All right. And these were documents that</p> <p>23 you had in Nebraska?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Were all those documents at your office,</p>
43	45
<p>1 meet or talk with anyone at Michael Foods</p> <p>2 other than your lawyers?</p> <p>3 A. No.</p> <p>4 Q. Did you -- you didn't talk to Terry Baker</p> <p>5 or Toby Catherman?</p> <p>6 A. The only discussion I had with</p> <p>7 Terry Baker was just to make him aware that I</p> <p>8 was giving my deposition on this date.</p> <p>9 Q. And when did you talk to Terry Baker to</p> <p>10 tell him that?</p> <p>11 A. I don't recall. Since it's been</p> <p>12 scheduled.</p> <p>13 Q. So you didn't ask Mr. Baker or</p> <p>14 Mr. Catherman whether they had any additional</p> <p>15 or different information on the topics that</p> <p>16 you're going to cover as the corporate</p> <p>17 representative?</p> <p>18 A. Absolutely not.</p> <p>19 Q. If you could look at Exhibit W, which is</p> <p>20 the July 17, 2013, letter. There are two</p> <p>21 footnotes. One is for topic 1 and the other</p> <p>22 is for topic 15. And they both say</p> <p>23 essentially the same thing, that your</p> <p>24 testimony is limited -- on those topics is</p> <p>25 limited to your own personal knowledge and</p>	<p>1 or did you have any at home?</p> <p>2 A. They were all at my office.</p> <p>3 Q. And did that include electronic</p> <p>4 documents, things on your computer?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Do you still -- as a consultant, are you</p> <p>7 still based in Wakefield, Nebraska?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And has it been determined how</p> <p>10 long you will serve as a consultant to Michael</p> <p>11 Foods?</p> <p>12 A. Yes.</p> <p>13 Q. And how long is that?</p> <p>14 A. Ten months.</p> <p>15 Q. Ten months?</p> <p>16 A. At that point in time it will be</p> <p>17 reviewed.</p> <p>18 Q. Did you ask others within Michael Foods</p> <p>19 to look for documents as part of the</p> <p>20 discovery?</p> <p>21 A. I did not, no.</p> <p>22 Q. We talked a little bit before about</p> <p>23 Waldbaum. What was or is MG Waldbaum?</p> <p>24 A. It is the company that -- the legal</p> <p>25 entity that the egg producing operations fall</p>

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<p>1 under.</p> <p>2 Q. And before Waldbaum was part of Michael</p> <p>3 Foods, what business was it engaged in?</p> <p>4 A. Egg products.</p> <p>5 Q. And did it have layer hens that produced</p> <p>6 eggs?</p> <p>7 A. Yes.</p> <p>8 Q. And what did you do -- this is</p> <p>9 pre-Michael Foods, what did you do for</p> <p>10 Waldbaum? I think you said you started there</p> <p>11 in 1980?</p> <p>12 A. Yes, I held a number of positions over</p> <p>13 time and built up and took more responsibility</p> <p>14 as time went on.</p> <p>15 Q. Okay. And was it the focus of your</p> <p>16 various positions on the layer hen side of</p> <p>17 Waldbaum's operations?</p> <p>18 A. Yes, it was. I did have one short stint</p> <p>19 where I was in processing plant management.</p> <p>20 Q. And when you -- once Waldbaum became part</p> <p>21 of Michael Foods, did you continue to focus on</p> <p>22 the layer hen side of the business?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. When did you get the title VP live</p> <p>25 production?</p>	<p>1 production?</p> <p>2 A. The operations managers at the farms, the</p> <p>3 company veterinarian, the company</p> <p>4 nutritionist, contract flock manager.</p> <p>5 Q. So there's an operations manager at each</p> <p>6 of the farms?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And --</p> <p>9 A. I should say at each of the locations</p> <p>10 there are multiple farms at -- at --</p> <p>11 communities, so there may be one manager</p> <p>12 at -- in a community.</p> <p>13 Q. All right. As VP live production, what</p> <p>14 kinds of reports did you prepare on a regular</p> <p>15 basis?</p> <p>16 A. For my superior?</p> <p>17 Q. Yes.</p> <p>18 A. Is that the question?</p> <p>19 Main report was a monthly scorecard of</p> <p>20 key indicators and productivity and results</p> <p>21 along with a quarterly project update.</p> <p>22 Q. Is there a name for the quarterly project</p> <p>23 update other than quarterly project update?</p> <p>24 A. Actually, no.</p> <p>25 Q. And the two reports that you mentioned,</p>
47	49
<p>1 A. It was in approximately '92.</p> <p>2 Q. And between 1988 and 1992, during that</p> <p>3 entire time frame were you working on layer</p> <p>4 hen kinds of issues?</p> <p>5 A. The time that I was involved in the</p> <p>6 processing plant was approximately '91, so</p> <p>7 that's that short period where I was not</p> <p>8 working with the farms and the layers.</p> <p>9 Q. And let's just take since you've been VP</p> <p>10 live production. As VP live production what</p> <p>11 were your responsibilities?</p> <p>12 A. To oversee all the farm operations and</p> <p>13 everything that has to do with operating and</p> <p>14 running those.</p> <p>15 Q. And did your responsibilities as VP live</p> <p>16 production change at all over time from 1992</p> <p>17 forward?</p> <p>18 A. No, just configurations of farms may have</p> <p>19 changed; but the responsibilities, no.</p> <p>20 Q. And as VP live production, to whom did</p> <p>21 you report?</p> <p>22 A. The president of the egg company.</p> <p>23 Q. And I know you may have had a lot of</p> <p>24 people, but who are the primary people who</p> <p>25 report -- reported directly to you as VP live</p>	<p>1 the key indicators and the quarterly project</p> <p>2 update, did you submit those electronically?</p> <p>3 A. Yes, sir.</p> <p>4 Q. As VP live production, what reports did</p> <p>5 you receive on a regular basis?</p> <p>6 A. The monthly financial reports. Most</p> <p>7 other reports are as needed or as I called for</p> <p>8 them.</p> <p>9 Q. Did you get --</p> <p>10 A. Excuse me, I did -- do receive a farm</p> <p>11 operations manager's monthly report or a</p> <p>12 report -- basically a report from my direct</p> <p>13 reports on their monthly activities.</p> <p>14 Q. Okay.</p> <p>15 A. Also did receive a monthly UEP compliance</p> <p>16 report.</p> <p>17 Q. All right. And who prepared that monthly</p> <p>18 UEP compliance report?</p> <p>19 A. Kori Leske.</p> <p>20 Q. And where is Kori based?</p> <p>21 A. Le Sueur, Minnesota.</p> <p>22 Q. We talked briefly before about UEP. What</p> <p>23 is United Egg Producers?</p> <p>24 MR. GREENE: Objection, vague.</p> <p>25 THE WITNESS: It's a producer</p>

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<p>1 organization developed to meet the needs of</p> <p>2 egg producers in regard to regulatory issues,</p> <p>3 environmental, animal welfare, food safety</p> <p>4 issues.</p> <p>5 BY MR. KINNEY:</p> <p>6 Q. Does UEP sell the output of its members?</p> <p>7 A. Does it what?</p> <p>8 Q. Does it solve the production of its</p> <p>9 members?</p> <p>10 A. No.</p> <p>11 Q. Does UEP act as the bargaining agent for</p> <p>12 its members to negotiate prices with the</p> <p>13 customers?</p> <p>14 MR. GREENE: Objection, lack of</p> <p>15 foundation.</p> <p>16 THE WITNESS: No.</p> <p>17 BY MR. KINNEY:</p> <p>18 Q. Who belongs to UEP?</p> <p>19 MR. GREENE: Objection, lack of</p> <p>20 foundation.</p> <p>21 THE WITNESS: I certainly can't</p> <p>22 name off all the companies, but I understand</p> <p>23 there are about 210 million of the 280 million</p> <p>24 birds, the companies that represent those</p> <p>25 birds, that they are members of UEP.</p>	<p>1 requirement in terms of the number of hens</p> <p>2 that you have to have or the number of eggs</p> <p>3 you produce to be a UEP member?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Is Michael Foods an egg farmer?</p> <p>6 A. Yes.</p> <p>7 Q. I'm going to show you what's been marked</p> <p>8 as Exhibit A --</p> <p>9 (Exhibit Number A marked for</p> <p>10 identification.)</p> <p>11 BY MR. KINNEY:</p> <p>12 Q. -- which is an excerpt from the 2012 Form</p> <p>13 10-K for Michael Foods Group Inc. And</p> <p>14 directing your attention in Exhibit A to the</p> <p>15 third page, there is a heading General.</p> <p>16 Do you see that?</p> <p>17 A. Yes, sir.</p> <p>18 MR. GREENE: John, just for the</p> <p>19 record, can you just elaborate this is not the</p> <p>20 entire 10-K. Can you just elaborate on what</p> <p>21 this excerpt is from the 10-K?</p> <p>22 MR. KINNEY: It's what I want to</p> <p>23 direct his attention to.</p> <p>24 MR. GREENE: Okay. For the record,</p> <p>25 there's five pages total, some pages blank and</p>
51	53
<p>1 BY MR. KINNEY:</p> <p>2 Q. Are there any requirements for being a</p> <p>3 member in UEP?</p> <p>4 MR. DAVIS: Objection, lack of</p> <p>5 foundation.</p> <p>6 THE WITNESS: Pay dues.</p> <p>7 BY MR. KINNEY:</p> <p>8 Q. Any other requirement you can think of to</p> <p>9 be a UEP member?</p> <p>10 A. You have to be an egg producer, I</p> <p>11 believe.</p> <p>12 Q. And what is an egg producer?</p> <p>13 MR. GREENE: Objection, vague.</p> <p>14 THE WITNESS: Someone that owns</p> <p>15 chickens and farms and produces eggs.</p> <p>16 BY MR. KINNEY:</p> <p>17 Q. Right. So I own three hens in my</p> <p>18 backyard, can I join UEP?</p> <p>19 MR. GREENE: Objection. Hold it.</p> <p>20 Give me a chance to object. Objection, calls</p> <p>21 for speculation and lack of foundation.</p> <p>22 THE WITNESS: As far as I know, you</p> <p>23 could be a member.</p> <p>24 BY MR. KINNEY:</p> <p>25 Q. So as far as you know, there's no</p>	<p>1 some pages portions are blank.</p> <p>2 Go ahead and ask your question.</p> <p>3 BY MR. KINNEY:</p> <p>4 Q. All right. So in this filing with the</p> <p>5 SEC for the year end 2012, Michael Foods</p> <p>6 describes itself stating, quote: We are a</p> <p>7 diversified producer and distributor of food</p> <p>8 products in three segments; egg products,</p> <p>9 refrigerated potato products and cheese and</p> <p>10 other dairy case products.</p> <p>11 Does that say anything about Michael</p> <p>12 Foods being an egg farmer?</p> <p>13 MR. GREENE: Objection, the</p> <p>14 document speaks for itself.</p> <p>15 MR. RAYLE: Move to strike the</p> <p>16 objection.</p> <p>17 MR. KINNEY: Wait a minute. I'm</p> <p>18 happy to go along with certain objections</p> <p>19 certainly for privilege. But, you know, at</p> <p>20 some point the speaking objections are</p> <p>21 ridiculous. You had your chance to prepare</p> <p>22 the witness. I don't want to hear things</p> <p>23 like, "The document speaks for itself." It's</p> <p>24 a nonsensical objection. You'll have your</p> <p>25 chance -- you know, if you don't like our</p>

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<p>1 questions, you can ask him on redirect.</p> <p>2 But speaking objections are highly</p> <p>3 improper, they are not provided for in the</p> <p>4 Federal Rules of Civil Procedure, and I will</p> <p>5 kindly ask that you refrain from doing them.</p> <p>6 MR. GREENE: I disagree to your</p> <p>7 characterization of the objection. But you've</p> <p>8 made your point for the record.</p> <p>9 MR. RAYLE: Madam reporter, would</p> <p>10 you note my objection to that question. I</p> <p>11 move to strike it, the objection. It's</p> <p>12 improper.</p> <p>13 BY MR. KINNEY:</p> <p>14 Q. All right. After all of that, do you</p> <p>15 have the question in mind -- does the 10-K say</p> <p>16 anything about Michael Foods being an egg</p> <p>17 farmer?</p> <p>18 A. It says that we are a producer.</p> <p>19 Q. It says you are a diversified producer</p> <p>20 and distributor of food products in three</p> <p>21 segments, egg products, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Let me show you what's been marked</p> <p>24 previously as Exhibit K.</p> <p>25 (Exhibit K marked for</p>	<p>1 in the Nebraska State Constitution that</p> <p>2 prohibited corporations from engaging in</p> <p>3 farming or ranching in Nebraska?</p> <p>4 MR. GREENE: Objection to the form</p> <p>5 of the question.</p> <p>6 THE WITNESS: Somewhat familiar.</p> <p>7 BY MR. KINNEY:</p> <p>8 Q. Okay. And in Exhibit K that you have</p> <p>9 before you, if you go the second page from the</p> <p>10 end of the document, there's a heading, do you</p> <p>11 see it, Nebraska Constitutional Provision?</p> <p>12 A. I see it.</p> <p>13 Q. And it states -- at the bottom of that</p> <p>14 paragraph it refers to the constitutional</p> <p>15 provision that we just discussed and states:</p> <p>16 The company believes that the egg production</p> <p>17 facilities of Waldbaum are part of Waldbaum's</p> <p>18 integrated facilities for the production,</p> <p>19 processing and distribution of egg products</p> <p>20 and therefore that any agricultural land</p> <p>21 presently owned by Waldbaum is being used for</p> <p>22 non-farming and non-ranching purposes.</p> <p>23 Is that a correct statement based on your</p> <p>24 knowledge?</p> <p>25 MR. GREENE: Objection, the</p>
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<p>1 identification.)</p> <p>2 BY MR. KINNEY:</p> <p>3 Q. For the record, Exhibit K is an excerpt</p> <p>4 from Michael Foods' Form 10-K for the year</p> <p>5 ending December 31, 1995. And directing your</p> <p>6 attention in Exhibit K on the third page of</p> <p>7 the document, up -- the last full paragraph</p> <p>8 before there's a heading Refrigerated</p> <p>9 Distribution.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. And the paragraph above that</p> <p>13 it states that: The company's shell egg and</p> <p>14 egg products businesses are fully integrated</p> <p>15 from the production and maintenance of laying</p> <p>16 flocks through processing of shell eggs and</p> <p>17 further processed egg products.</p> <p>18 Is that a correct statement?</p> <p>19 A. Yes.</p> <p>20 Q. Is it correct that historically a portion</p> <p>21 of Michael Foods and the Waldbaum egg</p> <p>22 production and processing facilities were</p> <p>23 located in Nebraska?</p> <p>24 A. Yes.</p> <p>25 Q. And are you familiar with the provision</p>	<p>1 question is vague and also object to the</p> <p>2 extent it calls for a legal conclusion.</p> <p>3 THE WITNESS: Would you please</p> <p>4 repeat the question.</p> <p>5 BY MR. KINNEY:</p> <p>6 Q. Sure. That statement that I read to you</p> <p>7 that starts: The company believes... and so</p> <p>8 on that's in the paragraph under Nebraska</p> <p>9 Constitutional Provision in Exhibit K, is that</p> <p>10 a correct statement?</p> <p>11 MR. GREENE: Same objection.</p> <p>12 BY MR. KINNEY:</p> <p>13 Q. And in particular, that the -- that the</p> <p>14 land used by Waldbaum is therefore not being</p> <p>15 used for farming or ranching purposes?</p> <p>16 A. Correct.</p> <p>17 Q. Are you familiar with something that's</p> <p>18 referred to as the Capper-Volstead Act?</p> <p>19 A. Somewhat familiar with it.</p> <p>20 Q. And just what's your general</p> <p>21 understanding of what Capper-Volstead is?</p> <p>22 MR. DAVIS: I just want to state an</p> <p>23 objection to any legal advice that was</p> <p>24 provided to the witness from counsel for UEP.</p> <p>25 BY MR. KINNEY:</p>

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<p>1 Q. Do you have the question in mind?</p> <p>2 A. Would you repeat it, please.</p> <p>3 Q. Sure. What's your understanding of what</p> <p>4 Capper-Volstead provides for generally?</p> <p>5 A. That you have to have some ownership of</p> <p>6 hens to comply.</p> <p>7 Q. Do you have any understanding of how</p> <p>8 Capper-Volstead applies to UEP?</p> <p>9 A. Not specifically.</p> <p>10 Q. Do you have any understanding of how</p> <p>11 Capper-Volstead applies to Michael Foods'</p> <p>12 participation in UEP?</p> <p>13 A. No.</p> <p>14 Q. Who at Michael Foods, based on your</p> <p>15 knowledge and experience, is most</p> <p>16 knowledgeable about Capper-Volstead?</p> <p>17 A. Terry Baker.</p> <p>18 Q. And if you had a question about</p> <p>19 Capper-Volstead, is Terry Baker the person</p> <p>20 that you'd ask?</p> <p>21 A. He may be the person that I would start</p> <p>22 with.</p> <p>23 Q. Have you ever asked Terry Baker questions</p> <p>24 about Capper-Volstead?</p> <p>25 A. No.</p>	<p>1 A. Yesterday.</p> <p>2 Q. Did you see -- prior to yesterday did you</p> <p>3 ever see any other requests from UEP for</p> <p>4 Capper-Volstead certifications?</p> <p>5 A. No.</p> <p>6 Q. Did Michael Foods, to your knowledge,</p> <p>7 provide certifications that more than</p> <p>8 50 percent of all eggs handled by Michael</p> <p>9 Foods, including eggs produced, contracted or</p> <p>10 purchased, are produced on farms owned or</p> <p>11 operated by Michael Foods?</p> <p>12 A. I'm not aware of that.</p> <p>13 (Exhibit T marked for</p> <p>14 identification.)</p> <p>15 BY MR. KINNEY:</p> <p>16 Q. Let me show you what we've marked as</p> <p>17 Exhibit T. Exhibit T is excerpts from the</p> <p>18 Michael Foods' Form 10-K for the year ending</p> <p>19 December 31, 2003.</p> <p>20 And Mr. Bebee, my question is directing</p> <p>21 your attention to the third page of Exhibit T,</p> <p>22 the last full paragraph on page 2 which starts</p> <p>23 in 2003.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
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<p>1 Q. Have you ever asked anybody else at</p> <p>2 Michael Foods questions about Capper-Volstead?</p> <p>3 A. No.</p> <p>4 Q. Did Michael Foods ever provide</p> <p>5 certificates or statements of compliance with</p> <p>6 Capper-Volstead to UEP?</p> <p>7 A. I don't know.</p> <p>8 (Exhibit R marked for</p> <p>9 identification.)</p> <p>10 BY MR. KINNEY:</p> <p>11 Q. Let me show you what we've marked as</p> <p>12 Exhibit R. And for the record, Exhibit R is a</p> <p>13 letter from Chad Gregory to UEP members dated</p> <p>14 December 5, 2003. It's coded MFI0001880,</p> <p>15 1881.</p> <p>16 Have you had a chance to take a look at</p> <p>17 Exhibit R?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And did you see this letter</p> <p>20 and the attached Capper-Volstead certification</p> <p>21 form in or about December 2003?</p> <p>22 A. No.</p> <p>23 Q. Have you ever seen this?</p> <p>24 A. Yes.</p> <p>25 Q. When was the first time you saw it?</p>	<p>1 Q. All right. And is it correct as stated</p> <p>2 in Exhibit T that in 2003 approximately</p> <p>3 30 percent of the divisions, and the divisions</p> <p>4 being the egg products divisions, egg needs</p> <p>5 were satisfied by production from our owned</p> <p>6 hens with a balance being purchased under</p> <p>7 third-party egg procurement contracts in the</p> <p>8 spot market?</p> <p>9 A. Are you asking me if that's --</p> <p>10 Q. Is that a correct statement?</p> <p>11 A. To the best of my knowledge, yes.</p> <p>12 Q. As part of Michael Foods UEP membership,</p> <p>13 was Michael Foods asked to certify that over</p> <p>14 50 percent of all eggs that Michael Foods</p> <p>15 handled were produced on farms owned or</p> <p>16 operated by Michael Foods?</p> <p>17 A. I don't know that.</p> <p>18 (Exhibit S marked for</p> <p>19 identification.)</p> <p>20 BY MR. KINNEY:</p> <p>21 Q. Let me show you what's been marked as</p> <p>22 Exhibit S. For the record, Exhibit S is a</p> <p>23 one-page document that has the caption United</p> <p>24 Egg Producers Membership Agreement coded</p> <p>25 UE0148015.</p>

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<p>1 A. (Reviews document.)</p> <p>2 Q. Have you seen that before?</p> <p>3 MR. GREENE: Would counsel be</p> <p>4 willing to frame that question to exclude</p> <p>5 communications with counsel as in apart</p> <p>6 from --</p> <p>7 BY MR. KINNEY:</p> <p>8 Q. Apart from your meetings and</p> <p>9 conversations with your counsel to prepare for</p> <p>10 your deposition have you seen Exhibit S</p> <p>11 before?</p> <p>12 A. No.</p> <p>13 Q. Are the handwriting and signatory on</p> <p>14 Exhibit S Terry Bakers?</p> <p>15 A. It appears to be, yes.</p> <p>16 Q. Did you ever discuss, whether it's</p> <p>17 Exhibit S, or any other UEP membership</p> <p>18 agreement with Mr. Baker?</p> <p>19 A. Certainly discussed becoming a member of</p> <p>20 the certified program.</p> <p>21 Q. Did you ever discuss with Mr. Baker the</p> <p>22 certification that's included in this</p> <p>23 agreement which states: Certification, I</p> <p>24 hereby certify that all of the above</p> <p>25 information is correct and that over</p>	<p>1 A. No.</p> <p>2 Q. Have you ever asked anyone, any nonlawyer</p> <p>3 at Michael Foods whether Michael Foods is an</p> <p>4 egg producer for Capper-Volstead purposes?</p> <p>5 A. No.</p> <p>6 Q. Have you ever -- and again, I'm not</p> <p>7 asking for what the advice is. Have you ever</p> <p>8 sought or received advice on whether UEP is a</p> <p>9 qualified Capper-Volstead cooperative?</p> <p>10 A. No.</p> <p>11 Q. Have you ever asked any non-lawyers at</p> <p>12 Michael Foods whether UEP is a qualified</p> <p>13 Capper-Volstead cooperative?</p> <p>14 A. No.</p> <p>15 Q. Let's see, I -- you've attended from time</p> <p>16 to time UEP meetings, correct?</p> <p>17 A. Yes, I have.</p> <p>18 Q. And as part of those meetings, do you</p> <p>19 from time to time meet informally with other</p> <p>20 attendees to have dinner, to go out to a ball</p> <p>21 game or have a drink?</p> <p>22 A. Sure.</p> <p>23 Q. Okay. Have you ever discussed within</p> <p>24 those informal settings whether all UEP</p> <p>25 members are egg producers?</p>
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<p>1 50 percent of all eggs handled by our company,</p> <p>2 including eggs produced, contracted or</p> <p>3 purchased, are produced on farms owned or</p> <p>4 operated by our company?</p> <p>5 A. I do not recall such a conversation.</p> <p>6 Q. And is it your understanding that</p> <p>7 throughout the decade the 2000s, from 2000</p> <p>8 forward, that Michael Foods has satisfied less</p> <p>9 than 50 percent of its total egg needs from</p> <p>10 company-owned production?</p> <p>11 A. Would you repeat the question.</p> <p>12 Q. Let's take the time frame from 2000 to</p> <p>13 the present. Is it your understanding during</p> <p>14 that entire time frame that Michael Foods</p> <p>15 obtained less than 50 percent of its total egg</p> <p>16 needs from company-owned hens?</p> <p>17 A. Yes.</p> <p>18 Q. And wasn't it usually in the 30 percent</p> <p>19 range?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Have you ever -- I'm not asking for what</p> <p>22 it is, it's just a question of have you ever</p> <p>23 sought or received advice on whether Michael</p> <p>24 Foods is an egg farmer or an egg producer for</p> <p>25 Capper-Volstead purposes?</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Have you ever discussed in those</p> <p>3 situations whether UEP is a Capper-Volstead</p> <p>4 cooperative?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Can you recall what kinds of things you</p> <p>7 discussed with the other attendees in those</p> <p>8 informal settings at UEP meetings?</p> <p>9 A. Mainly personal items.</p> <p>10 Q. Have you ever heard of a law firm by the</p> <p>11 name of Bran and Isaacson?</p> <p>12 A. Yes, I have.</p> <p>13 Q. Do you know understand Bran and Isaacson</p> <p>14 is counsel for UEP?</p> <p>15 A. I understand that.</p> <p>16 Q. As far as you know has Bran and Isaacson</p> <p>17 ever represented Michael Foods?</p> <p>18 A. Not to my knowledge.</p> <p>19 Q. Have they ever represented you?</p> <p>20 A. No.</p> <p>21 Q. Have you ever asked anyone for</p> <p>22 information on whether Michael Foods is an egg</p> <p>23 farmer for Capper-Volstead purposes?</p> <p>24 MR. DAVIS: I'll object insofar as</p> <p>25 the question calls for advice provided from</p>

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<p style="text-align: right;">66</p> <p>1 counsel for UEP.</p> <p>2 THE WITNESS: No.</p> <p>3 BY MR. KINNEY:</p> <p>4 Q. Have you asked anyone for information on</p> <p>5 whether UEP is a qualified Capper-Volstead</p> <p>6 cooperative?</p> <p>7 MR. DAVIS: Same objection.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. KINNEY:</p> <p>10 Q. Does Michael Foods belong to any entity</p> <p>11 other than UEP that claims to be a</p> <p>12 Capper-Volstead cooperative?</p> <p>13 MR. GREENE: Objection, lack of</p> <p>14 foundation.</p> <p>15 THE WITNESS: Not to my knowledge.</p> <p>16 BY MR. KINNEY:</p> <p>17 Q. Are you familiar with Urner Barry?</p> <p>18 A. Yes.</p> <p>19 Q. And have you ever attended -- Urner Barry</p> <p>20 sponsors -- I think they are called executive</p> <p>21 conferences for the egg and poultry industry,</p> <p>22 have you ever attended any of those?</p> <p>23 A. Never.</p> <p>24 Q. Do you know whether anybody else at</p> <p>25 Michael Foods has?</p>	<p style="text-align: right;">68</p> <p>1 we're about fifth in bird numbers.</p> <p>2 Q. And I know you said you don't pay careful</p> <p>3 attention. But is it your impression that</p> <p>4 Michael Foods' ranking as an egg producer has</p> <p>5 changed over time?</p> <p>6 A. Yes.</p> <p>7 Q. Has it gone down in the rankings?</p> <p>8 A. Yes.</p> <p>9 Q. Who at Michael Foods is most</p> <p>10 knowledgeable about layer hen flock size and</p> <p>11 reasons for changes in flock sizes?</p> <p>12 A. Probably myself.</p> <p>13 Q. I'm sorry?</p> <p>14 A. Myself.</p> <p>15 Q. So is there anybody at Michael Foods who</p> <p>16 is more knowledgeable about flock size --</p> <p>17 about its flock size than you?</p> <p>18 A. About its company-owned flock size, no.</p> <p>19 Q. Okay. So if you had questions about</p> <p>20 Michael Foods' flock size, you'd ask yourself,</p> <p>21 you would already know it?</p> <p>22 A. I wouldn't guarantee that I would know</p> <p>23 the answer to every question, but I would get</p> <p>24 it from one of my people.</p> <p>25 Q. Right. Okay. Who at Michael Foods is</p>
<p style="text-align: right;">67</p> <p>1 A. Yes.</p> <p>2 Q. Who has?</p> <p>3 A. Terry Baker.</p> <p>4 Q. Anybody else?</p> <p>5 A. Toby Catherman, Pat Melena, Lowell</p> <p>6 Ostrand.</p> <p>7 Q. Anybody else?</p> <p>8 A. Those are the only ones I know for sure.</p> <p>9 Q. Who are the largest producers of eggs</p> <p>10 today, what company?</p> <p>11 MR. GREENE: Objection, lack of</p> <p>12 foundation.</p> <p>13 THE WITNESS: I don't know the</p> <p>14 order exactly. But Cal-Maine Foods is a large</p> <p>15 one. Rose Acre Farms is a large one.</p> <p>16 BY MR. KINNEY:</p> <p>17 Q. Any others?</p> <p>18 A. Sparboe is a large producers, producer.</p> <p>19 Daybreak Foods is a large producer.</p> <p>20 Q. Any others?</p> <p>21 A. Ohio Fresh. I have trouble keeping track</p> <p>22 of the names, how they change over time.</p> <p>23 Q. Okay. How does Michael Foods rank as an</p> <p>24 egg producer?</p> <p>25 A. I don't focus on that. But I believe</p>	<p style="text-align: right;">69</p> <p>1 most knowledgeable about chick hatch or chick</p> <p>2 purchases?</p> <p>3 A. There are other people that know more</p> <p>4 details than I do. But from an overall</p> <p>5 standpoint, it should be myself.</p> <p>6 Q. Okay. And who at Michael Foods is most</p> <p>7 knowledgeable about its egg production volume?</p> <p>8 A. That would be myself.</p> <p>9 Q. And who is most knowledgeable about</p> <p>10 Michael Foods' egg production costs?</p> <p>11 A. It would be myself.</p> <p>12 Q. Who at Michael Foods is most</p> <p>13 knowledgeable about new facilities for layer</p> <p>14 hens that Michael Foods constructed or</p> <p>15 acquired?</p> <p>16 A. Myself.</p> <p>17 Q. And who at Michael Foods is most</p> <p>18 knowledgeable about renovations or remodeling</p> <p>19 of existing facilities for layer hens at</p> <p>20 Michael Foods?</p> <p>21 A. Myself.</p> <p>22 Q. In its SEC filings, the 10-Ks, Michael</p> <p>23 Foods used to refer to itself as the second</p> <p>24 largest producer of eggs or the fourth largest</p> <p>25 producer of eggs and there is no longer any</p>

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<p>1 statement about how it ranks as an egg 2 producer. Do you know why that statement was 3 eliminated? 4 MR. GREENE: Objection, lack of 5 foundation. 6 THE WITNESS: No, I don't. 7 BY MR. KINNEY: 8 Q. Did anybody consult with you about that? 9 A. No. 10 Q. Since 2000, has Michael Foods' flock size 11 increased or decreased? 12 A. Decreased. 13 Q. From approximately what to what? What 14 was the high, what was the low? 15 A. We were at approximately 13 and a half 16 million and now we're at approximately ten and 17 a half million. 18 Q. When you started at Michael Foods in or 19 about 1998, how many layer hens did Michael 20 Foods have then? 21 A. I would have to check. I don't recall. 22 Q. It was something less than 13.5 million? 23 A. I'm not sure without checking. 24 Q. Okay. And from the time you joined the 25 company, joined Michael Foods in 1988 from --</p>	<p>1 the Michael Foods' Form 10-K for the year 2 ending 2012. 3 MR. GREENE: Do you have one for 4 me, John? 5 MR. KINNEY: I'm sorry. 6 BY MR. KINNEY: 7 Q. Directing your attention to the second 8 page of Exhibit B is the list of facilities, a 9 complete and correct list of the locations 10 where Michael Foods has layer hens or pullets 11 today? 12 A. Where we have company-owned hens or owned 13 facilities? Which did you say? 14 Q. Is it a complete list of locations where 15 Michael Foods has layer hens or pullets today? 16 A. No, it is not. 17 Q. What's not included? 18 A. Contract flocks. 19 Q. Okay. We'll talk about those. With the 20 exception of the contract -- the hens that are 21 housed at contract facilities, does this 22 reflect all the locations where Michael Foods 23 has layer hens or pullets? 24 A. Yes, it does. 25 Q. And just so we understand -- so using</p>
71	73
<p>1 generally for some period of time did the 2 flock size increase? 3 A. I would have to go back and check the 4 actual flock numbers. Pretty much maintained 5 until -- for the most part until signing on 6 the UEP program. 7 Q. So things were pretty much the same in 8 that 13.5 million range until about 2006? 9 A. Generally. There was some ups and downs, 10 but always is. 11 MR. GREENE: John, how are we 12 looking in terms of a break? At some 13 point -- some time soon? 14 MR. KINNEY: Right now is fine. 15 THE VIDEOGRAPHER: Off record. 16 The time is 9:42. 17 (Recess.) 18 THE VIDEOGRAPHER: We are back on 19 the record. 20 The time is 9:55. 21 (Exhibit B marked for 22 identification.) 23 BY MR. KINNEY: 24 Q. Mr. Bebee, let me show you what's been 25 marked as Exhibit B, which is an excerpt from</p>	<p>1 Gaylord, Minnesota, for example, it says: Egg 2 production, pullet houses. Does that mean it 3 has both layer hens and pullets? 4 MR. GREENE: Wait just for a 5 minute. 6 THE WITNESS: Well, if you will 7 notice, it is listed separately. 8 BY MR. KINNEY: 9 Q. Right. 10 A. Egg production -- 11 Q. I see. 12 A. -- will be laying hens. And egg 13 production pullet houses would be where birds 14 are grown. 15 Q. All right. Great. So the pullet houses 16 are Gaylord, Minnesota; Wakefield, Nebraska 17 and Plainfield, Nebraska, correct? 18 A. Yes. 19 Q. I've seen references in some of the 20 documents to something called Lake Prairie. 21 What's that? 22 A. That's the name of the farm in Le Sueur, 23 Minnesota. 24 Q. Same thing, there have been references to 25 something called Golden Egg?</p>

19 (Pages 70 to 73)

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<p>1 A. There is the layer farm at Gaylord, 2 Minnesota. 3 Q. Somebody from Nebraska. What and where 4 is Big Bread? 5 A. That is at Wakefield, Nebraska. 6 Q. And if even worse, what and where is 7 Husker Pride? 8 A. That is also at Wakefield, Nebraska. 9 Q. Did you name those? 10 A. No. 11 Q. Do all the hens have to be dressed in 12 little red sweaters? 13 A. No, that would not be the norm. 14 (Exhibit C marked for 15 identification.) 16 BY MR. KINNEY: 17 Q. Let me show you what we've marked as 18 Exhibit C. Which is a March 20, 2005 email 19 from Terry Baker to various individuals. And 20 it's coded MFI0017306 through 309. And the 21 attachment, I believe, is -- there's a 22 reference to a file UEP impact analysis, 23 March 21, 2005. 24 Have you seen Exhibit C prior to the 25 preparation for your deposition?</p>	<p>1 cage spacing allowances is what it would mean 2 at Michael Foods? 3 A. Yes. 4 Q. And this was showing that if you 5 implemented the cage spacing guidelines, it 6 would reduce the flock size at Michael Foods? 7 A. Yes. 8 Q. Did you have any -- once you and 9 Terry Baker put this impact analysis together, 10 did you have any meetings or discussions with 11 others at Michael Foods regarding the study? 12 A. I don't remember. 13 Q. In 2005 you were based in Nebraska. 14 Where was Terry Baker based? 15 A. Nebraska. 16 Q. And let's see, when was the first year 17 that you -- that Michael Foods started 18 implementing the UEP cage spacing guidelines? 19 A. When we signed on in 2006. 20 Q. All right. And it was with -- when -- 21 you started populating houses effective when? 22 A. We would have populated them according to 23 the schedule after that date. 24 Q. Right. So sometime maybe after the 25 middle of 2006 as you started putting -- did</p>
75	77
<p>1 A. Well, I don't remember the document 2 specifically. But I have no reason to believe 3 that I haven't seen it. 4 Q. Okay. And dropping down there's an email 5 from Terry Baker, Sunday, March 20, 2005, 6 12:42 p.m. 7 Do you see that? 8 A. I see that. 9 Q. All right. And it states: As per Gregg's 10 request, I have attached a file that Tim and I 11 put together to project the impact of 12 implementing the UEP ACC program for MFI. 13 Is the attachment something that you and 14 Terry Baker prepared? 15 A. It appears to be. 16 Q. And the Gregg -- as per Gregg's request, 17 is that Gregg Ostrander? 18 A. That's what the email suggests. 19 Q. And what was the purpose of this cage 20 density impact analysis that's attached to the 21 email? 22 A. I believe it to be a document that would 23 give a read on the impact of signing onto the 24 program. 25 Q. All right. So if you implemented the UEP</p>	<p>1 you do it so that as -- as you in effect 2 populated a house, a new house, that you would 3 implement the spacing guidelines? 4 MR. GREENE: Objection, confusing. 5 THE WITNESS: A new house of birds? 6 Is that your question? 7 BY MR. KINNEY: 8 Q. Yes. 9 A. Yes. 10 Q. That's when you would implement it? 11 A. Yes. 12 Q. And so what -- how did that affect the 13 flock size for 2007? 14 A. I don't remember the numbers 15 specifically. 16 Q. Okay. But since 2006 to the present it's 17 gone from about 13.5 to 10.5? 18 A. Approximately, yes. 19 Q. Is there a formula that Michael Foods 20 uses to convert shell eggs to what it calls 21 liquid equivalent pounds? 22 A. I don't deal with the conversion 23 formulas. 24 Q. All right. And we talked a little bit 25 before about contract growers. How many</p>

20 (Pages 74 to 77)

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<p>1 contract growers does Michael Foods use?</p> <p>2 A. Currently we have four different</p> <p>3 producers.</p> <p>4 Q. And in the past did you use more contract</p> <p>5 producers?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. How many more?</p> <p>8 A. In the '60s we had as many as 70</p> <p>9 approximately.</p> <p>10 Q. And since 2000, approximately how many</p> <p>11 did you have?</p> <p>12 A. It was -- there might have been one more</p> <p>13 than there is currently, a couple -- they have</p> <p>14 dropped off over time. And I don't recall the</p> <p>15 timing exactly of when they did.</p> <p>16 Q. Okay. And for the contract folks, does</p> <p>17 Michael Foods own the layer hens that are</p> <p>18 housed at the contract producers?</p> <p>19 A. Yes.</p> <p>20 Q. And the four different producers today,</p> <p>21 where are they located?</p> <p>22 A. They're located in Nebraska and South</p> <p>23 Dakota.</p> <p>24 Q. And approximately -- of the 10.5 million</p> <p>25 hens, approximately how many of those today</p>	<p>1 as MF10097528.xls6-27-07. And the other one</p> <p>2 is 7607.</p> <p>3 Mr. Bebee, what is Cooper Farms?</p> <p>4 MR. GREENE: Can I just ask, was</p> <p>5 this produced as a single document?</p> <p>6 MR. KINNEY: I believe so.</p> <p>7 MR. GREENE: Thank you.</p> <p>8 MR. KINNEY: You're welcome.</p> <p>9 THE WITNESS: I know it is one of</p> <p>10 the farms that eggs are procured from.</p> <p>11 BY MR. KINNEY:</p> <p>12 Q. Oh, okay. Cooper Farms isn't a contract</p> <p>13 grower?</p> <p>14 A. No, not as we define where we own the</p> <p>15 chickens.</p> <p>16 Q. What about these other farms like</p> <p>17 Lennartz Farm, is Lennartz Farms is --</p> <p>18 A. None of these on this report or pages are</p> <p>19 contract --</p> <p>20 Q. Okay.</p> <p>21 A. -- farms where we own the birds, company</p> <p>22 owns the birds.</p> <p>23 Q. All right. And are you familiar with</p> <p>24 this UEP transition summary that's --</p> <p>25 A. No.</p>
79	81
<p>1 are housed at contract growers?</p> <p>2 A. Approximately 1.4 million birds.</p> <p>3 Q. And have you had -- you know, back when</p> <p>4 you had 70 contract growers, was it a higher</p> <p>5 number that you housed at --</p> <p>6 A. It actually was approximately the same</p> <p>7 number, approximately a million and a half</p> <p>8 birds.</p> <p>9 Q. Okay. So that's been kind of a</p> <p>10 consistent number, about 1.5 million</p> <p>11 company-owned hens are housed at contract</p> <p>12 growers' facilities?</p> <p>13 A. Yes, there have been some dips, typical</p> <p>14 dips over time and houses that have gone away</p> <p>15 and houses that come into the picture as new</p> <p>16 houses too.</p> <p>17 (Exhibit G marked for</p> <p>18 identification.)</p> <p>19 BY MR. KINNEY:</p> <p>20 Q. Let me show you what's been marked as</p> <p>21 Exhibit G. For the record, it's a document</p> <p>22 that has the caption Michael Foods Egg</p> <p>23 Products Company, Cooper Farms UEP Transition</p> <p>24 Summary. It's a two-page document. It's</p> <p>25 produced as a native file, and it's identified</p>	<p>1 Q. No. Do you know who prepared it?</p> <p>2 A. No, I don't.</p> <p>3 Q. When Michael Foods became a UEP Certified</p> <p>4 producer, did it require suppliers to comply</p> <p>5 with the UEP guidelines?</p> <p>6 MR. GREENE: Objection, lack of</p> <p>7 foundation.</p> <p>8 THE WITNESS: I'm not the one</p> <p>9 that's knowledgeable about that.</p> <p>10 BY MR. KINNEY:</p> <p>11 Q. Who would be?</p> <p>12 A. Terry Baker and Toby Catherman would more</p> <p>13 than likely be.</p> <p>14 Q. What about for your contract growers that</p> <p>15 are housing Michael Foods' owned layer hens,</p> <p>16 did they have to comply with the UEP</p> <p>17 guidelines?</p> <p>18 A. Yes.</p> <p>19 Q. What are the documents or reports at</p> <p>20 Michael Foods that track layer hen</p> <p>21 populations?</p> <p>22 A. We have an SAP flock and feed system is</p> <p>23 where the majority of the information is</p> <p>24 tracked. We also have some specific</p> <p>25 UEP-required documentation to fill out.</p>

21 (Pages 78 to 81)

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<p>1 Q. And within the SAP system, is there any</p> <p>2 particular -- by title, any particular report</p> <p>3 or reports that track layer hen population?</p> <p>4 A. Flock progress report would be the name</p> <p>5 of the main report.</p> <p>6 Q. Does the flock progress report include</p> <p>7 egg production?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a report within SAP that tracks</p> <p>10 the costs related to layer hens and egg</p> <p>11 production?</p> <p>12 A. Only partial cost-only fee, only-fee</p> <p>13 cost.</p> <p>14 Q. And is there a name or title for that</p> <p>15 report?</p> <p>16 A. That would also be on the flock progress</p> <p>17 report.</p> <p>18 Q. What about other costs of labor and</p> <p>19 things like that --</p> <p>20 A. Not on that report. That report would</p> <p>21 just include production information, eggs laid</p> <p>22 and egg weight and the feed consumed by the</p> <p>23 birds and the cost of that feed.</p> <p>24 Q. Is there any report that tracks other</p> <p>25 kinds of costs that are related to egg</p>	<p>1 proportion to the flock size reduction?</p> <p>2 A. Egg production has actually improved</p> <p>3 slightly as the birds have had more space.</p> <p>4 And mortality has improved also, which equates</p> <p>5 to more overall production. We actually have</p> <p>6 also decreased in production overall because</p> <p>7 of proprietary customer-based programs where</p> <p>8 we have taken birds out, which equates to less</p> <p>9 dozens overall and the liquid being produced.</p> <p>10 Q. All right.</p> <p>11 (Exhibit H marked for</p> <p>12 identification.)</p> <p>13 BY MR. KINNEY:</p> <p>14 Q. I'll show you what we've marked as</p> <p>15 Exhibit H. And it's a two-page document coded</p> <p>16 MF10000161 and 162. And it has a heading</p> <p>17 Michael Foods Egg Products Company Historical</p> <p>18 Analysis of EPC Egg Procurement Costs Per</p> <p>19 Unit.</p> <p>20 Mr. Bebee, what's Exhibit H?</p> <p>21 A. (Reviews document.) It appears to be a</p> <p>22 report that portrays the cost of the procured</p> <p>23 liquid.</p> <p>24 Q. Okay. And in the upper right-hand corner</p> <p>25 of the first page there's a block "Prep By"</p>
83	85
<p>1 production?</p> <p>2 A. Yes.</p> <p>3 Q. And what's that?</p> <p>4 A. I don't deal with those reports. Once</p> <p>5 again, I get summary reports at month end from</p> <p>6 our controller.</p> <p>7 Q. Who deals with those other costs?</p> <p>8 A. That would be Nancy Breitreutz.</p> <p>9 Q. Can you spell her name?</p> <p>10 A. I'll try. B-r-e-i-t-k-r-e-i-t-z [sic].</p> <p>11 Q. And -- that's pretty good. I don't know.</p> <p>12 Sounds good to me. Of course I have a partner</p> <p>13 named Jim Malysiak. So you try and spell</p> <p>14 that.</p> <p>15 Where is Nancy based?</p> <p>16 A. Wakefield.</p> <p>17 Q. What's your best estimate of the number</p> <p>18 of eggs that the company-owned hens produced</p> <p>19 in 2012?</p> <p>20 A. That would be approximately -- trying to</p> <p>21 recollect, I think it would be approximately</p> <p>22 280 million dozen.</p> <p>23 Q. And we talked before about how the flock</p> <p>24 has gone down from 13 and a half to</p> <p>25 10.5 million. Has egg production gone down in</p>	<p>1 with the initials KSW.</p> <p>2 Do you know who KSW is?</p> <p>3 A. I have an idea who it is, but I don't</p> <p>4 know.</p> <p>5 Q. Okay. What's your idea?</p> <p>6 A. Kim White probably is who produced this.</p> <p>7 Q. All right. And who is Kim White?</p> <p>8 A. She's on the accounting staff.</p> <p>9 Q. And where is she based?</p> <p>10 A. Wakefield.</p> <p>11 Q. Do you know what the data sources are</p> <p>12 that are used to prepare this report?</p> <p>13 A. No.</p> <p>14 Q. Okay. Do you know for what purpose this</p> <p>15 is prepared?</p> <p>16 A. No.</p> <p>17 Q. Do you know to whom it's distributed?</p> <p>18 A. No.</p> <p>19 Q. Is this anything that you used in the</p> <p>20 ordinary course of your business as VP of live</p> <p>21 production?</p> <p>22 A. No, I dealt with internal production.</p> <p>23 Q. Okay. But here there is -- there --</p> <p>24 directing your attention to the first page of</p> <p>25 Exhibit H, if we start up at the very top,</p>

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<p>1 there's a bracket "EPC Internal Production." 2 Do you see that? And then there is also 3 "EPC Purchased Liquid and Shell Cost." 4 A. I see that. 5 Q. So is the EPC internal production -- so 6 where it has, for example, shell egg volume 7 and shell egg cost for the week ending 8 September 28, 2002, is that the volume and the 9 cost per dozen for eggs produced by 10 company-owned hens? 11 A. It appears to be. 12 Q. Over time how do the costs for Michael 13 Foods compare on eggs produced internally 14 versus the cost to acquire eggs on the 15 outside? 16 MR. GREENE: Objection, lack of 17 foundation. 18 THE WITNESS: I'm not the best 19 qualified to answer that question. 20 BY MR. KINNEY: 21 Q. Do you know who -- who would be? If you 22 had a question about how those two costs 23 compare, who would you ask? 24 A. Nancy Breikreutz, the controller. 25 Q. Who makes the decision how much -- how</p>	<p>1 A. It actually was. 2 Q. How much bigger? 3 A. About 70,000 birds. 4 Q. It was 70,000 birds more or 70,000 total? 5 A. More. 6 Q. More. So -- 7 A. More. 8 Q. Okay. Did you build any other new 9 facilities for layer hens? 10 A. We did not on our own company farms, no. 11 Q. And at your contract grower facilities 12 did they build some new houses? 13 A. One farm did add two houses -- are you 14 talking from 2000 to present? 15 Q. Yes. 16 A. Okay. 17 Q. Is that correct, your testimony? 18 A. We have -- we have also added a cage-free 19 house in South Dakota with 60,000 birds 20 approximately three years ago. 21 Q. Okay. Anything else? 22 A. Two houses at Sunnyside Farms. 23 Q. That's a contract flock? 24 A. Yes. And they total approximately 25 480,000 birds.</p>
87	89
<p>1 many eggs to get from internal production 2 versus purchasing on the outside? 3 A. Procurement does. 4 Q. And for egg procurement is that 5 Terry Baker and Toby Catherman? 6 A. Yes. 7 Q. Do you know during what time frame this 8 historical analysis was prepared? This 9 particular one looks like October 2003. 10 A. All I know is what I see on the report. 11 Q. All right. Thank you. Since 2000, what 12 expansions did Michael Foods make to any of 13 its facilities for layer hens? 14 A. We added a contract flock. We actually 15 added two contract flocks since 2000. We 16 replaced -- also, in one of the complexes we 17 replaced birds that were lost in a fire on one 18 of the sites and a house that burned to the 19 ground -- or burned -- was totalled. 20 Q. Okay. Did you build any new houses? 21 A. We built the one new house that -- 22 Q. To replace the one that burned down? 23 A. Yes. 24 Q. And was the new house bigger than the old 25 house?</p>	<p>1 Q. And -- but the 480 is part of about the 2 1.5 million that are at the contract growers? 3 A. Yes. 4 Q. The cage-free house in South Dakota with 5 the 60,000 birds, is that owned by Michael 6 Foods or is that a contract grower? 7 A. It's a contract grower. We own the 8 birds. 9 Q. What's the name of the contract grower 10 with the cage-free house? 11 A. Van Vuren. 12 Q. And Sunnyside that you mentioned, they're 13 where? 14 A. In Firth, Nebraska. 15 Q. And the Michael Foods house that burned 16 down, where was that? 17 A. Le Sueur, Minnesota. 18 Q. And when -- when was it replaced? 19 A. It was in 2007. 20 Q. Was the fire in 2007 as well? 21 A. No, it was earlier. I don't remember the 22 date exactly. 23 Q. Is there a report at Michael Foods that 24 tracks costs or projects to either build new 25 facilities or renovate existing facilities?</p>

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<p>1 A. There isn't one report. It's -- the</p> <p>2 information is within our capital management</p> <p>3 system and our capital management people keep</p> <p>4 track of all those costs using numerous</p> <p>5 reports and I cannot tell you the names of the</p> <p>6 reports.</p> <p>7 Q. Do you have to -- so, for example, with</p> <p>8 the -- to replace the house that burned down</p> <p>9 did you have to make a request for capital</p> <p>10 authorization, whatever they call it at</p> <p>11 Michael Foods?</p> <p>12 A. Yes.</p> <p>13 Q. And who has to review and approve</p> <p>14 requests for capital expenditures?</p> <p>15 A. It's generated by the operations manager.</p> <p>16 It has to go through myself and through the --</p> <p>17 our controller and on up through the ranks to</p> <p>18 upper management for approval and actually to</p> <p>19 the board if it exceeds a certain amount,</p> <p>20 board of directors.</p> <p>21 Q. As between Terry Baker and Toby</p> <p>22 Catherman, I think I saw something that one's</p> <p>23 responsible for egg procurement west and the</p> <p>24 other east. Is that your understanding?</p> <p>25 A. Well, Toby Catherman actually reported to</p>	<p>1 Q. Did it ever have its own hatchery?</p> <p>2 A. No.</p> <p>3 Q. Did Waldbaum?</p> <p>4 A. No.</p> <p>5 Q. Who are the primary chick suppliers for</p> <p>6 Michael Foods?</p> <p>7 A. Hy-Line, Bovans and Lohmann.</p> <p>8 Q. Could you spell those? I know Hy-line.</p> <p>9 Hy-line is H-y-l-i-n-e.</p> <p>10 A. Bovans is B-o-v-a-n-s. And they come</p> <p>11 from company by the name of Centurion. And</p> <p>12 the Lohmann actually comes through Hy-Line.</p> <p>13 Q. How many chicks does Michael Foods buy</p> <p>14 each year?</p> <p>15 A. That would be approximately six to</p> <p>16 7 million.</p> <p>17 Q. And who at Michael Foods is responsible</p> <p>18 for chick purchases?</p> <p>19 A. There are a number of people that</p> <p>20 actually follow through with the actual</p> <p>21 purchase, pullet farm managers and operations</p> <p>22 managers that actually do the actual</p> <p>23 purchasing and scheduling. I have been</p> <p>24 involved when we have negotiated prices for</p> <p>25 baby chicks. Some are negotiable and some are</p>
91	93
<p>1 Terry Baker.</p> <p>2 Q. All right. So the principal person</p> <p>3 responsible for egg procurement is</p> <p>4 Terry Baker?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any geographic allocation that</p> <p>7 you are familiar with between the two, who</p> <p>8 does what?</p> <p>9 A. Well, I know that in general Toby</p> <p>10 Catherman did most of the goings-on or the</p> <p>11 work to do on the East Coast and Terry did --</p> <p>12 it was split, yes.</p> <p>13 Q. Okay. And are they both still at Michael</p> <p>14 Foods?</p> <p>15 A. No, Toby Catherman has retired.</p> <p>16 Q. Oh, okay. When did he retire?</p> <p>17 A. Several months ago. I don't remember</p> <p>18 exactly.</p> <p>19 Q. And Terry Baker does -- is responsible</p> <p>20 overall for egg procurement today?</p> <p>21 A. He does have assistance. Toby Catherman</p> <p>22 has been replaced.</p> <p>23 Q. Okay. All right. Does Michael Foods</p> <p>24 breed and hatch its own chicks?</p> <p>25 A. No.</p>	<p>1 not.</p> <p>2 Q. What's your best estimate of on kind of a</p> <p>3 blended basis what the cost is per chick</p> <p>4 today?</p> <p>5 A. Today it's about \$0.77 a bird.</p> <p>6 Q. And is that higher than in the past?</p> <p>7 A. Yes.</p> <p>8 Q. I thought I saw documents in the past it</p> <p>9 was more in the 50-cent range?</p> <p>10 A. It's been at least in the 60s for --</p> <p>11 since feed really took off, that has driven</p> <p>12 the cost of the birds up.</p> <p>13 Q. Okay. What determines the number of</p> <p>14 chicks that Michael Foods buys each year?</p> <p>15 A. The laying hens schedule, on the needs to</p> <p>16 replace the birds.</p> <p>17 Q. Okay. Do you have a planned lifecycle</p> <p>18 for the layer hens that the company owns?</p> <p>19 A. Yes, we do. The lifecycle is</p> <p>20 approximately 85 weeks of age, of total age in</p> <p>21 the laying house.</p> <p>22 Q. And at what age do you typically put the</p> <p>23 pullets in the laying house?</p> <p>24 A. Sixteen weeks of age. It varies. Some</p> <p>25 by their growth status.</p>

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<p>1 Q. Okay. So -- but the total lifespan would</p> <p>2 be the 85 weeks plus the 16 weeks?</p> <p>3 A. Less.</p> <p>4 Q. How far in advance do you have to decide</p> <p>5 on the number of chicks that you'll buy?</p> <p>6 A. We're usually doing that at least a year</p> <p>7 in advance.</p> <p>8 Q. Can you cancel a chick purchase order?</p> <p>9 A. Yes, depending on how much time, how</p> <p>10 close you are to a delivery.</p> <p>11 Q. If you are closer to the delivery, there</p> <p>12 may be a financial penalty?</p> <p>13 A. We've never got into that, but it is</p> <p>14 possible that you could deal with that.</p> <p>15 Q. Okay. We talked a little bit about</p> <p>16 pullets. Just for the record, could you tell</p> <p>17 us what a pullet is?</p> <p>18 A. Sure. A pullet is what the bird is</p> <p>19 referred to in the growing house. It's what</p> <p>20 it's referred to from day-old to approximately</p> <p>21 16 weeks, at which time it is mature enough to</p> <p>22 begin the egg production, egg-producing cycle.</p> <p>23 So it's basically the period, growing period</p> <p>24 of the young bird when it is not mature enough</p> <p>25 to lay eggs.</p>	<p>1 A. They are sent to a processor for --</p> <p>2 Q. Okay. And generally what do they use the</p> <p>3 meat from spent hens for?</p> <p>4 A. Some of the birds go to -- what's</p> <p>5 referred to as a live processing where the</p> <p>6 birds are processed live and the meat is</p> <p>7 actually used for human food for like chicken</p> <p>8 nuggets and soups and processed patties and</p> <p>9 whatnot. The other portion actually goes to a</p> <p>10 rendered, renderer-type facility where it's</p> <p>11 produced into feedstuffs.</p> <p>12 Q. And do you get paid for the hens that go</p> <p>13 to the processors?</p> <p>14 A. Yes, we do.</p> <p>15 Q. Is there any particular person who -- at</p> <p>16 Michael Foods who is responsible for flock</p> <p>17 disposal?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that?</p> <p>20 A. Harry Dykstra.</p> <p>21 Q. Where is he based?</p> <p>22 A. South Dakota.</p> <p>23 Q. Does -- what's a feed mill?</p> <p>24 A. It's the facility that actually produces</p> <p>25 the finished feed and prepares it to be</p>
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<p>1 Q. And I apologize. I can't remember if I</p> <p>2 asked. What -- approximately how many pullets</p> <p>3 does Michael Foods have today?</p> <p>4 A. At any one point in time we have on the</p> <p>5 ground about 3.8 million at any given time.</p> <p>6 Q. All right. And does Michael Foods raise</p> <p>7 all its own pullets?</p> <p>8 A. We have to periodically purchased an</p> <p>9 outside flock if we do not have -- if the</p> <p>10 schedule doesn't match up to our pullets being</p> <p>11 grown.</p> <p>12 Q. Okay. Is there any particular company</p> <p>13 that you use as a pullet supplier when you</p> <p>14 have to buy on the outside?</p> <p>15 A. No, no one in particular. The pullet</p> <p>16 number I gave you was high. It's probably</p> <p>17 closer to 3 million at one time. That's an</p> <p>18 estimate.</p> <p>19 Q. Okay.</p> <p>20 A. Because there's always birds out of</p> <p>21 production and cleanup phases and all of that</p> <p>22 going on.</p> <p>23 Q. So you talked about approximately</p> <p>24 85 weeks in the layer henhouse. So what do</p> <p>25 you do after 85 weeks with the hens?</p>	<p>1 shipped to the chicken houses and to the</p> <p>2 birds.</p> <p>3 Q. Does Michael Foods own and operate its</p> <p>4 own feed mills?</p> <p>5 A. Yes, we have a number of feed mills.</p> <p>6 Q. Does Michael Foods grow corn or soybeans?</p> <p>7 A. No.</p> <p>8 Q. You buy that?</p> <p>9 A. We buy corn and soybean meal.</p> <p>10 Q. What is backfilling?</p> <p>11 A. It's replacing mortality. In cages where</p> <p>12 maybe a bird or birds has died, it is going</p> <p>13 back and replacing that bird or birds.</p> <p>14 Q. Okay. And do you backfill to maintain</p> <p>15 the size of the flock in the house?</p> <p>16 A. That would be the reason somebody would</p> <p>17 backfill, yes.</p> <p>18 Q. Okay. And if you don't backfill, then</p> <p>19 you are going to have further hens -- I'm</p> <p>20 sorry, fewer hens in the house, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Does Michael Foods backfill</p> <p>23 flocks?</p> <p>24 A. No.</p> <p>25 Q. Did it ever?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. And did it stop doing it when it</p> <p>3 became a UEP Certified producer?</p> <p>4 A. Yes.</p> <p>5 Q. And as a result, that means because you</p> <p>6 don't backfill, you can't fill the gaps in</p> <p>7 your flocks?</p> <p>8 A. Correct.</p> <p>9 Q. What's molting?</p> <p>10 A. It's resting the bird, actually taking</p> <p>11 the bird out of production and giving its</p> <p>12 system a rest so that it can come back into</p> <p>13 production and be -- produce eggs at a high</p> <p>14 rate once the bird is rejuvenated.</p> <p>15 Q. Does Michael Foods molt its flock?</p> <p>16 A. Periodically. It's an exception to the</p> <p>17 system where we make molt to make our schedule</p> <p>18 work.</p> <p>19 Q. And how long -- when you molt, how long</p> <p>20 are the hens out of production?</p> <p>21 A. Approximately a month.</p> <p>22 Q. Okay. So what determines whether you'll</p> <p>23 molt and when you'll molt and how much you'll</p> <p>24 molt?</p> <p>25 A. Sure. The reason we're doing any molting</p>	<p>1 (Recess.)</p> <p>2 THE VIDEOGRAPHER: This is the</p> <p>3 beginning of disk two in the deposition of</p> <p>4 Timothy Bebee. We are back on the record.</p> <p>5 The time is 10:51.</p> <p>6 (Exhibit Number J marked for</p> <p>7 identification.)</p> <p>8 BY MR. KINNEY:</p> <p>9 Q. Mr. Bebee, let me show you what we've</p> <p>10 marked as Exhibit J. And it's a September 25,</p> <p>11 2007 email from you to Carrie Cutler coded</p> <p>12 MFI0019965 -- I'm sorry. Actually, it's 19964</p> <p>13 through 19966. And the attachment is</p> <p>14 something called Internal Production Key</p> <p>15 Indicators and Drivers. And it's dated</p> <p>16 September 21, 2007.</p> <p>17 What is Exhibit J?</p> <p>18 A. (Reviews document.) It is an explanation</p> <p>19 to the monthly scorecard that was produced of</p> <p>20 key indicators for the farm areas.</p> <p>21 Q. And I think you -- you referred earlier</p> <p>22 today to the monthly scorecard. Is that the</p> <p>23 document that is the final page of Exhibit J?</p> <p>24 A. Yes, it is.</p> <p>25 Q. And just for purposes of clarity, this --</p>
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<p>1 in recent times here is usually because of our</p> <p>2 construction or renovation schedule. Every</p> <p>3 year we renovate houses because the systems</p> <p>4 are old and tired and beyond their useful</p> <p>5 life. So if we -- we may choose to molt</p> <p>6 flocks just to make the whole schedule work,</p> <p>7 to make sure that we got birds matched up when</p> <p>8 the houses are ready to come back into</p> <p>9 production or it may be another flock that you</p> <p>10 have to shift just to make the schedule work.</p> <p>11 Q. Okay. In a typical year is there some</p> <p>12 average number of flocks that you molt?</p> <p>13 A. No, not really. I believe last year we</p> <p>14 molted -- I think we molted four flocks in</p> <p>15 total.</p> <p>16 Q. And the four flocks were how many hens?</p> <p>17 A. In Nebraska it would have been about</p> <p>18 200,000 birds. And in Minnesota I believe it</p> <p>19 was about 120,000.</p> <p>20 Q. Okay.</p> <p>21 MR. KINNEY: I think we need to</p> <p>22 take a break.</p> <p>23 THE VIDEOGRAPHER: This is the end</p> <p>24 of disk one in the deposition of Tim Bebee.</p> <p>25 We are off the record at 10:41.</p>	<p>1 the final page of Exhibit J has the title</p> <p>2 Internal Production Key Indicators and</p> <p>3 Drivers. Is that the same as the monthly</p> <p>4 scorecard?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And I take it since it's called</p> <p>7 monthly, the scorecard is prepared monthly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is there a particular person who</p> <p>10 is responsible for preparing the monthly</p> <p>11 scorecard?</p> <p>12 A. That would be myself.</p> <p>13 Q. Okay. And are there particular data</p> <p>14 sources that you use to compile and prepare</p> <p>15 the monthly scorecard?</p> <p>16 A. Yes.</p> <p>17 Q. And what are those?</p> <p>18 A. It would be the month-end cost reports</p> <p>19 come out -- coming out of the accounting</p> <p>20 department.</p> <p>21 Q. All right.</p> <p>22 A. Would be the SAP, the flock and feed</p> <p>23 system, and it would also be reports from the</p> <p>24 operations managers and my direct reports.</p> <p>25 Q. Okay. All right. And this particular</p>

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<p>1 document, Exhibit J, the monthly scorecard is</p> <p>2 from September 2007. During what time frame</p> <p>3 did you prepare the monthly scorecards?</p> <p>4 A. I don't remember the actual date that I</p> <p>5 started, but it has been for a number of years</p> <p>6 now until the present.</p> <p>7 Q. Okay. All right. Was there a reason</p> <p>8 that you started preparing it?</p> <p>9 A. I was asked to produce it.</p> <p>10 Q. Who asked you to?</p> <p>11 A. That would have been the president of the</p> <p>12 company.</p> <p>13 Q. And at the time that was who?</p> <p>14 A. I believe they were started when J.D.</p> <p>15 Clarkson was in place. I'm not sure on that.</p> <p>16 Q. Okay. All right. And there's a</p> <p>17 reference in the -- in your -- I'm sorry. Let</p> <p>18 me start -- who is Carrie Cutler?</p> <p>19 A. The administrative assistant for Dave</p> <p>20 Johnson at the time.</p> <p>21 Q. Okay. So the Dave that you are referring</p> <p>22 to Dave's direct reports is Dave Johnson?</p> <p>23 A. Yes.</p> <p>24 Q. And he was CEO?</p> <p>25 A. Yes.</p>	<p>1 the way with the latest and greatest</p> <p>2 information.</p> <p>3 Q. And as VP of live production how did you</p> <p>4 use the monthly scorecard?</p> <p>5 A. I used it as a kind of report card on</p> <p>6 how -- how the results were doing, how the</p> <p>7 flocks -- really just as it states, the key</p> <p>8 indicators and drivers for what we were</p> <p>9 experiencing and how production was going.</p> <p>10 Q. Okay. And when we talked about plan, so</p> <p>11 every year you would do a plan?</p> <p>12 A. Yes.</p> <p>13 Q. And so if we were talking about 2008, so</p> <p>14 sometime in the second half of 2007 you do the</p> <p>15 plan for 2008?</p> <p>16 A. Yes.</p> <p>17 Q. And what goes into your plan?</p> <p>18 A. We do generate -- it starts with a bird</p> <p>19 schedule to predict how many dozens we are</p> <p>20 going to predict for a certain -- for the next</p> <p>21 year or depending on whether you are doing a</p> <p>22 plan or a forecast. But specifically for the</p> <p>23 plan, the forecasted bird output would go into</p> <p>24 that. We estimate our labor, our maintenance</p> <p>25 costs and any costs that would go into the</p>
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<p>1 Q. Okay. Is it correct that you prepared a</p> <p>2 draft email to send the scorecard to Dave</p> <p>3 Johnson, that's what the second part of the</p> <p>4 email chain is, starts, "Dave, here's a report</p> <p>5 that conveys..."?</p> <p>6 A. Are you asking did I send this email to</p> <p>7 Dave?</p> <p>8 Q. Yes.</p> <p>9 A. I have no reason to believe that I did</p> <p>10 not.</p> <p>11 Q. Okay. And in the second paragraph of the</p> <p>12 email to Dave, the one that starts:</p> <p>13 Year-to-date plan numbers, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And later in that same paragraph:</p> <p>16 We don't currently produce year-to-date</p> <p>17 forecast numbers, so the year-to-date plan</p> <p>18 number will have to do.</p> <p>19 What's the difference between a</p> <p>20 year-to-date forecast number and a</p> <p>21 year-to-date plan number?</p> <p>22 A. The plan was the original budget that was</p> <p>23 set usually two to four months prior -- two</p> <p>24 months prior to the start of the year. A</p> <p>25 forecast would be if there was an update along</p>	<p>1 cost of production. We also generate a</p> <p>2 projected capital improvement schedule of</p> <p>3 actual dollars spent for upgrades.</p> <p>4 Q. Is -- does the plan have a name? Is it</p> <p>5 called, you know, the farm plan or --</p> <p>6 A. The plan pretty much covers it, the plan.</p> <p>7 Q. The plan.</p> <p>8 A. But certainly there is a plan for every</p> <p>9 department.</p> <p>10 Q. Okay.</p> <p>11 A. Farms versus procurement --</p> <p>12 Q. Is it -- right.</p> <p>13 A. -- versus processing.</p> <p>14 MR. GREENE: You can't speak over</p> <p>15 each other.</p> <p>16 MR. KINNEY: Yeah. No, it's my</p> <p>17 problem. I should wait. I apologize.</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. Is the plan part of the SAP system or is</p> <p>20 it something different, separate from --</p> <p>21 A. It's separate.</p> <p>22 Q. And was your plan -- was there a process</p> <p>23 to review and approve your plan?</p> <p>24 A. Yes.</p> <p>25 Q. And who participated in that?</p>

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<p>1 A. Upper management and our CFO and a number 2 of people in his area. 3 Q. Okay. And how did you -- to whom did you 4 submit your plan? 5 A. The process is everything is rolled up by 6 the controller and her staff and it rolls on 7 up to corporate through the corporate 8 accounting people on up to the CFO and then 9 the top management. 10 Q. All right. But when you have -- when you 11 are submitting your plan you submit it to the 12 controller? 13 A. Yes. 14 Q. Who is that? 15 A. Nancy Breitreutz. 16 Q. All right. And in your memo to Dave 17 Johnson, you give explanations for various 18 line items and columns in the monthly 19 scorecard. Is there anything in those 20 descriptions that you are aware of that's not 21 complete and correct? 22 A. Nothing that I am aware of, no. 23 Q. Okay. In the monthly scorecard where you 24 have -- under Layers, do you see that? 25 A. Yes.</p>	<p>1 number of pounds -- it took 3.49 pounds of 2 feed to produce a dozen eggs? 3 A. Yes. 4 Q. And the percentage production is what? 5 A. How many birds per hundred would lay an 6 egg a day. 7 Q. And the percentage mortality rate per 8 week? 9 A. Yeah, how many would die collectively on 10 all the farms for that period on a percentage 11 basis. 12 Q. Okay. And then this includes what we 13 discussed earlier this morning, the number of 14 flocks molted? 15 A. Yes. 16 Q. Okay. And then there is -- also I see 17 there's a number of UEP flocks converted. So 18 are those the flocks that are going in with 19 the new spacing guidelines? 20 A. Yes. 21 (Exhibit O marked for 22 identification.) 23 BY MR. KINNEY: 24 Q. Let me show you what we've marked as 25 Exhibit O. And it's -- Exhibit O is a</p>
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<p>1 Q. And there's cost per dozen to produce. 2 And so, for example, is this for January 2007, 3 the first month? 4 A. Yes. 5 Q. And it's 0.3974. So that's .3974 cents 6 per dozen to produce? 7 A. 39 -- 8 Q. Yeah, 39 -- 9 A. -- .74 cents. 10 Q. Yeah, 39.74 cents. Thank you. 11 All right. And what's included in that 12 cost? Is that all-in costs or is it what you 13 said before, just things like feed? 14 A. It's all-in costs. 15 Q. Okay. And is that an actual figure for 16 January of 2007? That was your actual cost to 17 produce a dozen eggs in January 2007? 18 A. I would believe it to be, yes. 19 Q. Okay. And the same thing then, Dozens 20 Produced, under that is the number of dozens 21 of eggs that the company-owned hens produced 22 in January 2007? 23 A. I believe it to be, yes. 24 Q. All right. And feed conversion pounds 25 per dozen, that's -- what is that? That's the</p>	<p>1 one-page document coded MF10220576. And it 2 has the heading Farms Division Strategic Plan 3 2000. 4 A. (Reviews document.) 5 Q. Have you had a chance to take a look at 6 Exhibit O? 7 A. Yes. 8 Q. And what is this? 9 A. It's an explanation of the goal 10 improvement areas desired in 2000 to be 11 accomplished. 12 Q. Is this something you prepared? 13 A. It appears to be. 14 Q. And to whom do you submit something like 15 Exhibit O? 16 A. I don't remember specifically this 17 particular version. Normally it would go to 18 my direct reports and my superior. 19 Q. And your direct superior is whom? 20 A. Jim Dwyer. 21 Q. The president? 22 A. Yes. 23 Q. Okay. And this particular document 24 refers to "Strategic Plan 2000." How often 25 did you participate in preparing strategic</p>

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<p>1 plans?</p> <p>2 A. It varies. We do not do an updated</p> <p>3 farm-specific strategic plan every year.</p> <p>4 Q. Do you know who determines when there</p> <p>5 will be a new strategic plan?</p> <p>6 A. I would.</p> <p>7 Q. I'm sorry?</p> <p>8 A. I would.</p> <p>9 Q. Do you know who initiates --</p> <p>10 A. I would have determined --</p> <p>11 Q. Oh, you would have --</p> <p>12 A. -- when this strategic plan would have --</p> <p>13 Q. Oh, for the farms division.</p> <p>14 In Exhibit O under Most Efficient</p> <p>15 Production Processes, number 3, continuation</p> <p>16 of layer expansion, what is the "Bloomfield</p> <p>17 near complete"?</p> <p>18 A. We added a hen to each cage at that</p> <p>19 facility, and it must have carried over into</p> <p>20 2000 from '99.</p> <p>21 Q. And the next one is: Wakefield complete</p> <p>22 later 2000. What was that?</p> <p>23 A. The same type of work in that Wakefield</p> <p>24 complexes.</p> <p>25 Q. To add a hen to each cage?</p>	<p>1 produced in native file. It has the</p> <p>2 designation MF10090665.xls council,</p> <p>3 c-o-u-n-c-i-l, summary.</p> <p>4 Mr. Bebee, what's Exhibit P?</p> <p>5 A. It appears to be a recap of the</p> <p>6 productivity results related to productivity</p> <p>7 campaign or efforts in place for 2005.</p> <p>8 Q. Okay. And there are councils that are</p> <p>9 referred to in Exhibit P, operations, PSM and</p> <p>10 farm ops. Is farm ops your area?</p> <p>11 A. Yes, it is.</p> <p>12 Q. And what is PSM?</p> <p>13 A. Purchase supply management.</p> <p>14 Q. And operations?</p> <p>15 A. Basically that is the plant operations.</p> <p>16 Q. Who was on the farm ops council?</p> <p>17 A. All people that would report to me,</p> <p>18 managers, supervisors and in some cases hourly</p> <p>19 people, hourly employees also.</p> <p>20 Q. Okay. And then there are these</p> <p>21 categories in Exhibit P, 2005 commitment, 2005</p> <p>22 plan. What are those?</p> <p>23 A. It's differences. The plan is what was</p> <p>24 put into the plan originally. The commitment</p> <p>25 is the outlook for improvement over the plan</p>
111	113
<p>1 A. Yes.</p> <p>2 Q. And the last one: Minnesota completed</p> <p>3 2001, what was that?</p> <p>4 A. Same type of work at Gaylord and</p> <p>5 Le Sueur.</p> <p>6 Q. At Michael Foods I've seen references to</p> <p>7 something. What's the black book?</p> <p>8 A. That would be the monthly result book,</p> <p>9 the way it was referred to years ago, the</p> <p>10 month-end results.</p> <p>11 Q. Is it called something else now?</p> <p>12 A. It isn't really produced in a full book</p> <p>13 form like it used to be. So I am not aware of</p> <p>14 a term that rolls it all up today.</p> <p>15 Q. But for the farm operations, is the best</p> <p>16 summary of results the monthly scorecard?</p> <p>17 A. Yes.</p> <p>18 (Exhibit P marked for</p> <p>19 identification.)</p> <p>20 BY MR. KINNEY:</p> <p>21 Q. Let me show you what we've marked as</p> <p>22 Exhibit P.</p> <p>23 A. (Reviews document.)</p> <p>24 Q. It's a one-page document. Exhibit P is a</p> <p>25 one-page document and it has the -- it was</p>	<p>1 that council expects to realize.</p> <p>2 Q. And then there are also references</p> <p>3 incremental to plan and neutral to plan. What</p> <p>4 are those?</p> <p>5 A. Some -- the ones that are referred to as</p> <p>6 neutral were actually built into the plan.</p> <p>7 And incremental would be the actual</p> <p>8 improvements to plan.</p> <p>9 Q. And then there's one other column there,</p> <p>10 Unrealized Commitment. What's that?</p> <p>11 A. Let's see.</p> <p>12 Q. It's in the bottom part going across the</p> <p>13 fourth one, Unrealized Commitment.</p> <p>14 A. Hasn't taken place yet. To be -- to</p> <p>15 happen basically.</p> <p>16 (Exhibit Q marked for</p> <p>17 identification.)</p> <p>18 BY MR. KINNEY:</p> <p>19 Q. Let me show you what's been marked as</p> <p>20 Exhibit Q. And it's -- Exhibit Q is two</p> <p>21 documents, one is coded MF10358332 and 33.</p> <p>22 And the other is MF10103704 through 706.</p> <p>23 MR. GREENE: John, two questions</p> <p>24 about this. Was this produced as a single</p> <p>25 document?</p>

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<p>1 MR. KINNEY: No, they were produced 2 as (indicating), but they're -- 3 MR. GREENE: You're combining them 4 as an exhibit? 5 MR. KINNEY: Yes. Correct. 6 MR. GREENE: And there is shading 7 on the documents. Is that part of the 8 original document? 9 MR. KINNEY: Yes. 10 MR. GREENE: Thank you. 11 MR. KINNEY: And I did it this way 12 because it was easier -- one has less shading 13 than the other, thought it would be easier to 14 read. 15 BY MR. KINNEY: 16 Q. All right. Mr. Bebee, there is a 17 reference in Exhibit Q to legacy council 18 overview. What are the legacy councils? 19 A. It's the councils that have existed for 20 several years. 21 Q. And are they the same as what we 22 discussed a few minutes ago, the PSM farm ops 23 and operations? 24 A. Yes. 25 Q. Who is Chuck Bailey?</p>	<p>1 Q. All right. And there's a reference to an 2 animal welfare team. Was that -- did that 3 have to do with the layer hens? 4 A. Yes. 5 Q. And who was on that animal welfare team? 6 A. I would have to go back and look up 7 names. I don't -- Kori Leske was the leader 8 of the team. There was a number of people 9 that were actually on the team. 10 Q. Were you part of the animal welfare team? 11 A. I wasn't specifically on the team, but I 12 had oversight in all of the teams. 13 Q. If you turn to the top of page 2, the 14 first paragraph, it says: For farms, 15 Tim Bebee and the cost him agreed that the 16 monthly black book should provide us with a 17 measure of performance against goals. 18 What does that mean? What's that 19 referring to? 20 A. It appears to be referring to the 21 month-end results should communicate how we 22 were doing with the list of goals, the list of 23 team goals. 24 Q. All right. But as we discussed, the best 25 information about performance at the farm</p>
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<p>1 A. He is the former -- excuse me, yeah, 2 Bailey, he's the former VP over plant 3 operations. 4 Q. And who is Tim Larson? 5 A. Former VP over purchasing procurement. 6 Q. Okay. There's a reference here to a 7 supplier choice team. Do you know what that 8 is? 9 A. That would be one of the teams within the 10 farm operations. It's the egg producing team. 11 Q. And what does the supplier choice team do 12 or what did it do? 13 A. They work on efficiencies of internal 14 production and production costs, work on 15 continuous improvement. 16 Q. There is a reference to breaking recovery 17 mortality, the team is looking at to save 18 costs. Do you know what those are? 19 A. Now you are talking about two different 20 things there because breaking and recovery are 21 the issues that affect the liquid produced out 22 of the breaking rooms. And the mortality 23 is -- certainly has to do with the henhouses. 24 Q. Okay. 25 A. It's two different teams actually.</p>	<p>1 level is the -- is your monthly scorecard? 2 A. Yes. 3 Q. Okay. 4 MR. KINNEY: I think I'm finished 5 with my part. What I would suggest is we take 6 a five-minute break, just check my notes and 7 switch places if that's okay. 8 MR. GREENE: Sure. 9 THE VIDEOGRAPHER: Off the record. 10 The time is 11:20. 11 (Recess.) 12 THE VIDEOGRAPHER: We are back on 13 the record. 14 The time is 11:30. 15 16 EXAMINATION 17 18 BY MR. ARANOFF: 19 Q. Good morning, Mr. Bebee. My name is Ron 20 Aranoff. I'm going to be continuing the 21 examination today. 22 We met earlier, correct? 23 A. Yes. 24 Q. And as I said before, thank you for being 25 here today. We appreciate it.</p>

30 (Pages 114 to 117)

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<p>1 A. Sure.</p> <p>2 Q. I just want to for purposes of setting</p> <p>3 some background and segueing from one examiner</p> <p>4 to another just ask a couple of basic</p> <p>5 questions.</p> <p>6 I think you testified earlier that</p> <p>7 Michael Foods became a UEP Certified company</p> <p>8 in the summer of 2006, is that correct?</p> <p>9 A. I did testify to that, yes.</p> <p>10 Q. And that's accurate to the best of your</p> <p>11 knowledge?</p> <p>12 A. Yes, to the best of my knowledge.</p> <p>13 Q. And I think you also testified earlier</p> <p>14 that Michael Foods did not export eggs through</p> <p>15 the USEM, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And that's accurate, right?</p> <p>18 A. To the best of my knowledge, yes.</p> <p>19 Q. Did Michael Foods export eggs through any</p> <p>20 other cooperative that you can think of?</p> <p>21 A. Not that I know of.</p> <p>22 Q. Okay. Do you know whether Michael Foods</p> <p>23 exports eggs outside of any cooperative?</p> <p>24 A. I know that Michael Foods exports egg</p> <p>25 products.</p>	<p>1 Q. All right. And am I correct that you</p> <p>2 testified earlier that Crystal Farms is a</p> <p>3 wholly-owned subsidiary of Michael Foods?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And do you know since when</p> <p>6 Crystal Farms has been a wholly-owned</p> <p>7 subsidiary of Michael Foods?</p> <p>8 A. No, I don't.</p> <p>9 Q. If I told you that they had been a</p> <p>10 wholly-owned subsidiary of Michael Foods since</p> <p>11 1987, would that be -- would that refresh your</p> <p>12 recollection?</p> <p>13 A. No.</p> <p>14 (Exhibit Number 1 marked for</p> <p>15 identification.)</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Mr. Bebee, I'm showing you what's been</p> <p>18 marked as Bebee Number 1 for purposes of</p> <p>19 identification. This is a document two pages</p> <p>20 in length titled Michael Foods Company History</p> <p>21 on the upper left-hand corner. It bears the</p> <p>22 Michael Foods emblem also on the left-hand</p> <p>23 corner.</p> <p>24 Do you recognize this document,</p> <p>25 Mr. Bebee?</p>
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<p>1 Q. Okay. And to who does it export egg</p> <p>2 products?</p> <p>3 A. I could not tell you specifically.</p> <p>4 Q. Do you know whether those exports are</p> <p>5 domestic or international?</p> <p>6 A. They would be international to be</p> <p>7 exports.</p> <p>8 Q. Okay.</p> <p>9 A. Yes.</p> <p>10 Q. And do you have any idea what continent</p> <p>11 per se that they were exported to?</p> <p>12 A. I just know that over the years we have</p> <p>13 exported egg products to Japan. That's the</p> <p>14 only one that I know.</p> <p>15 Q. Okay. Do you know whether those exports</p> <p>16 were done through an export broker?</p> <p>17 A. No, I don't.</p> <p>18 Q. Who at the company would be most familiar</p> <p>19 with the export practices of Michael Foods?</p> <p>20 A. Vince O'Brien.</p> <p>21 Q. I think also a little bit earlier you</p> <p>22 testified about an entity called Crystal</p> <p>23 Farms.</p> <p>24 Do you remember that?</p> <p>25 A. Yes, I do.</p>	<p>1 A. (Reviews document.) I have not seen this</p> <p>2 document before.</p> <p>3 Q. Okay. I will represent to you that this</p> <p>4 is a copy of information about Michael Foods</p> <p>5 that was taken off the Michael Foods website</p> <p>6 on July 16th of 2013 at 12:07 p.m. And you</p> <p>7 can check me because it says so at the bottom</p> <p>8 right-hand side corner of the document.</p> <p>9 Do you see that?</p> <p>10 A. I see that.</p> <p>11 Q. I'd like to just -- have you had a chance</p> <p>12 to look at the document, Mr. Bebee?</p> <p>13 A. I've glanced at it.</p> <p>14 Q. The only question I'm going to ask you</p> <p>15 about this document is in the middle --</p> <p>16 slightly above the middle of the page under</p> <p>17 the heading Timeline 1926. I'll give you a</p> <p>18 second to read it. You can, of course, peruse</p> <p>19 the rest of the document if you would like.</p> <p>20 But the only questions I'm going to ask are</p> <p>21 based upon where I just referred you to.</p> <p>22 A. (Reviews document.) Okay.</p> <p>23 Q. And if you'll notice under Timeline 1926,</p> <p>24 there's an indication there, the last sentence</p> <p>25 of that paragraph says: Crystal Farms joined</p>

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<p>1 Michael Foods in 1987. 2 Do you see that? 3 A. Yes, I do. 4 Q. Do you have any reason to think that 5 that's not accurate? 6 A. No. 7 Q. Okay. You can put that document away. 8 And again, you testified that Michael 9 Foods did no exports through the USEM, is that 10 correct? 11 A. To the best of my knowledge. 12 (Exhibit Number 2 marked for 13 identification.) 14 BY MR. ARANOFF: 15 Q. Mr. Bebee, do you know what the United 16 Voices is? 17 A. Yes, I do. 18 Q. What is United Voices? 19 A. It's a communication coming out of United 20 Egg Producers office. 21 Q. Okay. And are you the one at Michael 22 Foods that receives the United Voices 23 newsletters? 24 A. I am one of many. 25 Q. Okay. Showing you what's been marked as</p>	<p>1 A. I believe you did. 2 Q. And if you look at the second paragraph, 3 it says: Provisional certification numbers 4 are now being assigned for each company in the 5 order by which the applications were received. 6 These companies will be authorized to trade 7 eggs using the provisional certification 8 number until an audit has been conducted, at 9 which time a fully certified status will be 10 achieved. The list shown below is in the 11 order by which applications were received by 12 the UEP office. 13 Did you see that? 14 A. Yes, I did. 15 Q. And did I read that correctly? 16 A. You did. 17 Q. If you then look down to the companies 18 that were listed right underneath, Mr. Bebee, 19 you'll see number 13. Number 13 says Crystal 20 Farms, is that correct? 21 A. It does. 22 Q. And is there any reason to believe that 23 Crystal Farms did not apply for application -- 24 did not apply for certification as of 25 March 25th, 2002?</p>
123	125
<p>1 Bebee 2 for purposes of identification. This 2 is a multi-page document dated March 25th, 3 2002 United Voices newsletter bearing Bates 4 stamp MFI0022860 and continuing, I believe, 5 consecutively through MFI0022873. 6 Do you see that? I'll give you a minute 7 to peruse it, Mr. Bebee. And I'm going to ask 8 you questions only with respect to the first 9 page of the document. 10 A. (Reviews document.) Okay. 11 Q. You'll see that the first paragraph under 12 Certified Companies says the following: The 13 following egg production companies have filed 14 an "application for certification" with UEP 15 and have therefore committed to implementing 16 animal husbandry guidelines. By this 17 commitment, these companies will begin to 18 phase in the cage space allowance with chicks 19 hatched after April 1st, 2002 and phase in the 20 guidelines for beak trimming, molting, 21 handling and transportation starting on 22 July 1st, 2002. 23 Did you see where I read that, Mr. Bebee? 24 A. Yes, I did. 25 Q. Did I read that correctly?</p>	<p>1 MR. GREENE: Objection, lack of 2 foundation. 3 THE WITNESS: I don't believe this 4 to be Crystal Farms of Michael Foods. 5 BY MR. ARANOFF: 6 Q. Who do you believe this to be? 7 A. There is a Crystal Farms in the south I'm 8 aware of. It's more than likely them. 9 Q. And how are you able to make that 10 distinction, sir? 11 A. Because I know we did not apply to be on 12 the program this early. 13 Q. Well, what indication do you have here 14 that the Crystal Farms listed in 13 is not the 15 Crystal Farms that is part of Michael -- the 16 wholly-owned subsidiary of Michael Foods? 17 MR. GREENE: Objection, 18 argumentative. 19 THE WITNESS: There's no indication 20 on this page of that. 21 BY MR. ARANOFF: 22 Q. There's no indication -- would you agree 23 that there's no indication that it's not the 24 Crystal Farms that's part of Michael Foods? 25 MR. GREENE: Same objection.</p>

32 (Pages 122 to 125)

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<p>1 THE WITNESS: I would agree to</p> <p>2 that.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Okay.</p> <p>5 (Exhibit Number 3 marked for</p> <p>6 identification.)</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. Mr. Bebee, I'm showing you what's been</p> <p>9 marked as Bebee 3 for purposes of</p> <p>10 identification. The front page is an email</p> <p>11 cover sheet from Patricia Huff to you dated</p> <p>12 November 16th, 2006 labeled Attachment United</p> <p>13 Voices Current. That's Bates stamped</p> <p>14 MF10358842. Following that is an another</p> <p>15 United Voices newsletter. This one dated</p> <p>16 November 17th, 2006 bearing the Bates stamp</p> <p>17 MF10358843 and continuing through MF10358850.</p> <p>18 Take a minute to take a look at the document</p> <p>19 please and then we will -- I'll ask you some</p> <p>20 questions. My focus will largely be -- or</p> <p>21 entirely be on the first two pages of the</p> <p>22 document.</p> <p>23 A. (Reviews document.) Okay.</p> <p>24 Q. Okay. You'll see that this is again a</p> <p>25 United Voices newsletter. The document -- the</p>	<p>1 Q. What are transfer shell eggs, Mr. Bebee?</p> <p>2 A. Transfer the eggs to Crystal Farms</p> <p>3 Refrigerated Distribution Company.</p> <p>4 Q. And then if you look at the second</p> <p>5 paragraph, it says: The market began to react</p> <p>6 to the export by October 24th when USEM began</p> <p>7 to supply or purchase eggs to fill the export.</p> <p>8 By November 15th the Midwest large quote had</p> <p>9 risen to \$1.05 per dozen and the quotes for</p> <p>10 other regions had moved to even higher levels.</p> <p>11 This was the first time that Urner Barry's</p> <p>12 quote has been above a dollar since</p> <p>13 March 2004.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Did I read that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. If you look at the last paragraph on the</p> <p>19 same page, it says: We would like to</p> <p>20 acknowledge and extend our thanks to the</p> <p>21 following USEM members and encourage those</p> <p>22 that are not members to express their thanks</p> <p>23 as well.</p> <p>24 Do you see that?</p> <p>25 A. I see that.</p>
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<p>1 title of this particular one is Value of a</p> <p>2 Timely Export.</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. I read that correctly?</p> <p>6 A. Yes, you did.</p> <p>7 Q. Okay. The first paragraph of this</p> <p>8 newsletter says: The members of United States</p> <p>9 Egg Marketers, open paren, USEM, close paren,</p> <p>10 voted on October 20th to approve an export for</p> <p>11 delivery of 90 container loads, open paren,</p> <p>12 76,500 cases, close paren, of shell eggs. On</p> <p>13 that date, the Urner Barry Midwest large quote</p> <p>14 was \$0.74 and the mid range central breaking</p> <p>15 stock quote was \$0.29. The export was taken</p> <p>16 at an approximate price of \$0.38 per dozen and</p> <p>17 therefore considerably above farm prices on</p> <p>18 the date of the sale.</p> <p>19 I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. And just so that the record is clear,</p> <p>22 does Michael Foods deal at all in shell eggs?</p> <p>23 A. We do sell shell eggs to Crystal Farms --</p> <p>24 to our Crystal Farms division or transfer</p> <p>25 shell eggs.</p>	<p>1 Q. And I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. If you turn to the second page of the</p> <p>4 newsletter, which is Bates stamped MF10358844,</p> <p>5 you'll see that the third company listed is</p> <p>6 Crystal Farms.</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. And is that, to the best of your</p> <p>10 knowledge, the Crystal Farms of Michael Foods?</p> <p>11 A. No. To the best of my knowledge, it is</p> <p>12 not.</p> <p>13 Q. Is there any indication on this that this</p> <p>14 is a different Crystal Farms from the</p> <p>15 wholly-owned subsidiary that's part of Michael</p> <p>16 Foods?</p> <p>17 MR. GREENE: Objection,</p> <p>18 argumentative.</p> <p>19 THE WITNESS: No.</p> <p>20 (Exhibit Number 4 marked for</p> <p>21 identification.)</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. Mr. Bebee, I'll show you what's been</p> <p>24 marked as Bebee 4 for purposes of</p> <p>25 identification. Again, this is a cover</p>

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<p>1 email -- the first page of which is a cover 2 email from Patricia Huff to Tim Bebee dated 3 Thursday, August 2nd, 2007. 4 First, who is Patricia Huff? 5 A. (Reviews document.) She's on the staff 6 of UEP at that point in time. 7 Q. Okay. And again, if you take a look, 8 you'll see after the first cover page, which 9 is identified as MF10356331, there is another 10 United Voices newsletter running what I 11 believe is consecutively from Bates MF10356332 12 consecutively through MF10356340. I'll give 13 you a second to take a look at this document, 14 familiarize yourself. I am primarily focused 15 on the first page of the United Voices 16 newsletter. 17 A. (Reviews document.) Okay. 18 Q. Are you aware, Mr. Bebee, of any efforts 19 made by the UEP to manage supply among its 20 members? 21 MR. DAVIS: Objection to form. 22 THE WITNESS: I'm aware of a 23 request to molt birds early or take flocks out 24 earlier. 25 BY MR. ARANOFF:</p>	<p>1 MR. GREENE: Objection, lack of 2 foundation. 3 MR. DAVIS: Objection to form, lack 4 of foundation. 5 THE WITNESS: I am not able to 6 answer that question. I don't know. 7 MR. ARANOFF: Can we hand the 8 witness what was previously marked as Bebee K. 9 It was a prior exhibit. 10 BY MR. ARANOFF: 11 Q. I'll give you a minute to find it. Take 12 your time. 13 A. (Reviews document.) 14 Q. Were you able to find it? 15 A. I found it. 16 Q. Take a minute. Again, we're referencing 17 what's been previously marked as Bebee K for 18 purposes of identification. I want to direct 19 your attention to what is page 3 of 62. 20 You'll take a look, be able to see it at the 21 top of the page. And I want to direct your 22 attention to the middle of the page. You'll 23 see two carrots that look kind of like that 24 (indicating) and there is page 3. You'll be 25 able to see it it's right here (indicating).</p>
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<p>1 Q. And in your opinion, Mr. Bebee, do you 2 believe those to be efforts to manage supply? 3 A. Well, yes. 4 Q. Okay. If you'll look at the document 5 that I put in front of you, you'll see that in 6 the -- slightly below the middle of the page 7 under the title July 1st Flock Inventory, and 8 again, this document is dated August 1st of 9 2007, you'll notice that there's a bolded 10 sentence right above a large bolded division 11 line and it says: It could be good timing for 12 egg producers to take care of their business 13 by disposing of or molting hens two, dash, 14 three weeks earlier than previously scheduled. 15 Do you see where I read that, Mr. Bebee? 16 A. I see that. 17 Q. Did I read that correctly? 18 A. Yes, you did. 19 Q. Okay. And is this -- would this be one 20 of the examples of managing supply that you 21 just referenced? 22 A. Yes. 23 Q. Okay. Would it be fair to say that -- 24 Mr. Bebee, that one of the benefits of 25 managing supply is an increase in prices?</p>	<p>1 I'm going to try to show you and make it a 2 little easier. I'm going to reference 3 specifically the paragraph that starts: Shell 4 eggs... So if you want to just take a minute 5 to familiarize yourself with that. I'd like 6 to ask you some questions, please. 7 A. (Reviews document.) Okay. 8 Q. So again, this was referenced earlier 9 this morning by Mr. Kinney. This is Bebee K, 10 Exhibit K. And in the middle of the page it 11 says: Shell eggs are essentially a commodity 12 and are sold based upon reported egg prices. 13 Do you see that? 14 A. I see that. 15 Q. Did I read that correctly? 16 A. Yes, you did. 17 Q. "Egg prices in turn are significantly 18 influenced by shift in supply and demand. 19 Do you see that? 20 A. I see that. 21 Q. Do you have any reason to doubt the 22 accuracy of what is contained in Bebee K? 23 MR. GREENE: Objection, lack of 24 foundation. 25 THE WITNESS: No reason to doubt</p>

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<p>1 it. 2 (Exhibit Number 5 marked for 3 identification.) 4 BY MR. ARANOFF: 5 Q. I've shown you what's been marked as 6 Bebee 5 for purposes of identification. This 7 is a UEP board of directors meeting from 8 January 25th, 2005 in Atlanta, Georgia. It's 9 a multi-page document bearing Bates numbers 10 MF10613842 through MF10613847. I'm going 11 to -- just for purposes of making this a 12 little bit easier on you, Mr. Bebee, my focus 13 is going to be on the attendees on the first 14 page. And then on the top of page 3 there's 15 one motion. The second motion is what I would 16 like you to focus on. But obviously you are 17 free to peruse the document as you like. 18 A. (Reviews document.) 19 Q. All set? 20 A. Yes. 21 Q. I'm sorry. Okay. All right. So again, 22 these are minutes from the January 25th, 2005 23 UEP board of directors meeting in Atlanta, 24 Georgia. Do you -- before you looked at this, 25 do you have any independent recollection of</p>	<p>1 A. Correct. 2 Q. And the same would be true for -- to the 3 best of your knowledge, for Mr. Baker and 4 Mr. Catherman, correct? 5 A. Correct. 6 Q. If you'll look at page 3, there are at 7 the top of the page -- and maybe I didn't do 8 the best job of directing you there. So I'm 9 sorry about that. But you'll see at the top 10 of the page there are two motions. I'd like 11 to focus your attention on the second one if 12 you wouldn't mind, Mr. Bebee. And it says in 13 bold: Motion, colon, it was moved by 14 Mooney... 15 Who is Mooney? Do you know who Mooney 16 is? 17 A. I know Wayne Mooney. 18 Q. And to the best of your knowledge, is 19 this -- the person referenced here Wayne 20 Mooney? 21 A. If he was listed as attending, I would 22 think that it probably is. 23 Q. Okay. "...and seconded by Dean..." Do 24 you know who Dean is? 25 A. I would only speculate that it's Jim</p>
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<p>1 that meeting in particular? 2 A. No. 3 Q. Okay. You'll see that under Board 4 Members and Staff Terry Baker is listed as 5 having attended the meeting. 6 Do you see that? It's the fourth line 7 from the bottom. 8 A. I see that. 9 Q. Okay. And under member and -- Members 10 and Guests, which is the second group, you'll 11 notice that you're listed as the fourth person 12 on the attendee list? 13 A. Yes. 14 Q. Okay. And then also two lines down from 15 you the second person from the left is 16 Toby Catherman, right? 17 A. Yes. 18 Q. And both Mr. Baker and Mr. Catherman in 19 addition to yourself are employees or at least 20 at the time were employees of Michael Foods, 21 correct? 22 A. Yes. 23 Q. You'll -- you have no reason to believe 24 then based upon these minutes that you weren't 25 at this meeting, right?</p>	<p>1 Dean. 2 Q. Thank you. "...to recommend that the 3 current 'intentions program' for flocks to be 4 disposed of four weeks earlier than previously 5 scheduled and/or flock size reduction by five 6 percent be extended through Labor Day." 7 Do you see that, where I read that? 8 A. Yes. 9 Q. I read that correctly? 10 A. Yes. 11 Q. Okay. And then after that it says 12 carried, is that correct? 13 A. Yes, it does. 14 Q. So a couple of questions on this. Do you 15 have any understanding of what the intentions 16 program is or was, Mr. Bebee? 17 A. Well, it appears to be affecting the 18 disposal times of flocks. 19 Q. Do you have any understanding as you sit 20 here today as to why intentions program is in 21 quotes? 22 A. No, I don't. 23 Q. Okay. And is it fair to say that this 24 motion was passed by virtue of the fact that 25 it says carried afterwards?</p>

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<p>1 A. I believe that would be fair to say, yes.</p> <p>2 Q. And to the best of your knowledge, did</p> <p>3 Michael Foods comply with the -- with the</p> <p>4 motion as articulated here?</p> <p>5 A. No, we never adjusted our flocks based</p> <p>6 off UEP recommendations.</p> <p>7 Q. Okay. Is there any notation here that</p> <p>8 Michael Foods dissented from this motion?</p> <p>9 A. No.</p> <p>10 Q. Do you have any evidence or any</p> <p>11 correspondence that would indicate that</p> <p>12 Michael Foods did not agree with this motion?</p> <p>13 MR. GREENE: Objection,</p> <p>14 argumentative.</p> <p>15 THE WITNESS: I have no way of</p> <p>16 knowing that.</p> <p>17 BY MR. ARANOFF:</p> <p>18 Q. Having attended this meeting -- and we</p> <p>19 discussed earlier that you were present for</p> <p>20 this meeting. Having attended this meeting</p> <p>21 when this motion carried, did you say anything</p> <p>22 to voice a dissent to this motion?</p> <p>23 A. I don't remember. It's been a lot of</p> <p>24 years ago.</p> <p>25 Q. To the best of your knowledge, did you</p>	<p>1 Q. It says carried unanimously, right?</p> <p>2 A. It does say that.</p> <p>3 Q. And then motion number 2 says: The</p> <p>4 motion carried with a vote of 19 yes and eight</p> <p>5 nos.</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. So is it fair to say that when there is a</p> <p>9 dissent to a motion at a UEP meeting, there</p> <p>10 are times where those dissents are recorded?</p> <p>11 MR. GREENE: Objection,</p> <p>12 argumentative.</p> <p>13 THE WITNESS: You are asking</p> <p>14 whether they are recorded or not?</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Yes.</p> <p>17 A. Well, this would portray that they are</p> <p>18 recorded.</p> <p>19 Q. Okay. And again, on the motion that we</p> <p>20 were talking about before that I read into the</p> <p>21 record where it said carried, moving back to</p> <p>22 the top of page 3, right, the motion that we</p> <p>23 talked about involving Wayne Mooney and</p> <p>24 seconded by Jim Dean, it just says carried and</p> <p>25 there is no indication anywhere of there being</p>
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<p>1 send an email or anything else indicating your</p> <p>2 dissent with this motion?</p> <p>3 A. I have no idea.</p> <p>4 Q. To the best of your knowledge, did</p> <p>5 Mr. Baker or Mr. Catherman voice any dissent</p> <p>6 to this motion?</p> <p>7 A. I would have no idea what they did.</p> <p>8 Q. If there was a dissent to this motion,</p> <p>9 would it have been recorded someplace?</p> <p>10 MR. GREENE: Objection, lack of</p> <p>11 foundation.</p> <p>12 THE WITNESS: I don't know that.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Well, let's just -- for purposes of</p> <p>15 illustration, if you could turn to the second</p> <p>16 to last -- third to last page of this</p> <p>17 document. You'll see that there is a number</p> <p>18 of motions beginning at the bottom of the --</p> <p>19 bottom of the page and then continuing to the</p> <p>20 top of the next page. I'm not really that</p> <p>21 interested in the substance of the motion.</p> <p>22 Just for illustrative purposes, take a look at</p> <p>23 motion number 1. Do you see motion number 1</p> <p>24 at the bottom of the page?</p> <p>25 A. Yes.</p>	<p>1 any nos to that motion, correct?</p> <p>2 A. There's no indication here. That's</p> <p>3 correct.</p> <p>4 Q. Okay. Are you familiar with something</p> <p>5 called the 100 percent rule?</p> <p>6 A. Yes, I'm familiar with that.</p> <p>7 Q. What is the 100 percent rule, Mr. Bebee?</p> <p>8 A. My understanding of the meeting is that</p> <p>9 if you -- the meaning is if you sign onto the</p> <p>10 UEP Certified program, that you are required</p> <p>11 to include all of your farm operations at all</p> <p>12 locations.</p> <p>13 Q. Okay. And I know we may have covered</p> <p>14 this earlier, but I'm just going to kind of</p> <p>15 double back for purposes of foundation. The</p> <p>16 UEP has a lot of different committees,</p> <p>17 correct?</p> <p>18 A. Has a number of committees, yes.</p> <p>19 Q. Right. And one of those committees is</p> <p>20 the animal welfare committee, right?</p> <p>21 A. That would be one of them.</p> <p>22 Q. One of those is an environmental</p> <p>23 committee, right?</p> <p>24 A. That's correct.</p> <p>25 Q. And one of them would be a scientific</p>

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<p>1 committee, right?</p> <p>2 A. Yeah, that's not made up of members but</p> <p>3 it is a committee.</p> <p>4 Q. Okay. What does the animal welfare</p> <p>5 committee do?</p> <p>6 A. It deals with the issues associated with</p> <p>7 the certified program in terms of taking care</p> <p>8 of the birds.</p> <p>9 Q. And when you say taking care of birds,</p> <p>10 making sure that the birds are treated</p> <p>11 humanely, is that fair?</p> <p>12 A. Humanely is a questionable term in my</p> <p>13 mind.</p> <p>14 Q. Fair enough. Okay. So give me an</p> <p>15 idea -- when you say -- when we're talking</p> <p>16 about animal welfare, what are some of the</p> <p>17 things that would come under the rubric of the</p> <p>18 animal welfare committee?</p> <p>19 A. Beak trimming, molting, cage space,</p> <p>20 transportation and handling.</p> <p>21 Q. And what are the kinds of things that</p> <p>22 would come under the auspices of the UEP's</p> <p>23 environmental committee?</p> <p>24 A. Regulatory issues, compliance with</p> <p>25 byproducts and air quality.</p>	<p>1 identification.)</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. Mr. Bebee, the court reporter has marked</p> <p>4 as Bebee 6 for purposes of identification.</p> <p>5 This is a two-page document bearing Bates</p> <p>6 numbers MFI0619526 to MFI0619527. It's an</p> <p>7 email from you to Dave Johnson with a cc to</p> <p>8 Terry Baker. The date is Friday, July 6th,</p> <p>9 2007. And the subject is UEP Feedback, UEP.</p> <p>10 Take a minute to take a look at the</p> <p>11 document. I want to ask you a few questions.</p> <p>12 My questions are going to focus on the</p> <p>13 first -- second two paragraphs of the</p> <p>14 document.</p> <p>15 A. (Reviews document.)</p> <p>16 Q. Have you had a chance to look at that,</p> <p>17 Mr. Bebee?</p> <p>18 A. Yes.</p> <p>19 Q. Besides -- just so that we're -- just so</p> <p>20 that I'm clear, besides the animal welfare</p> <p>21 committee and the environmental committee, are</p> <p>22 you on any other UEP committees?</p> <p>23 A. No.</p> <p>24 Q. Have you ever been on any other UEP</p> <p>25 committees?</p>
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<p>1 Q. When you say "regulatory issues," you are</p> <p>2 talking about issues as they pertain to the</p> <p>3 environment?</p> <p>4 A. Yes, and government, the -- any of the</p> <p>5 regulatory agencies --</p> <p>6 Q. So --</p> <p>7 A. -- As far as complying to those.</p> <p>8 Q. Sorry. So somebody that's -- so as a</p> <p>9 member of the member of the environmental</p> <p>10 committee, is it fair to say that that</p> <p>11 committee was responsible to ensure compliance</p> <p>12 with, for example, the USDA?</p> <p>13 A. No.</p> <p>14 Q. Okay. The USDA -- you know what I mean</p> <p>15 when I say USDA, right?</p> <p>16 A. Yes, I do.</p> <p>17 Q. The USDA is a governmental agency, is it</p> <p>18 not?</p> <p>19 A. It is.</p> <p>20 Q. So why is -- why would the environmental</p> <p>21 committee not be responsible for interacting</p> <p>22 with the USDA?</p> <p>23 A. That would fall under the food safety</p> <p>24 committee.</p> <p>25 (Exhibit Number 6 marked for</p>	<p>1 A. Not that I recall.</p> <p>2 Q. Okay. So first of all, who is Dave</p> <p>3 Johnson as it relates to this email?</p> <p>4 A. He's a former CEO of Michael Foods.</p> <p>5 Q. Is -- when you say "former CEO," is</p> <p>6 Mr. Johnson still with the company?</p> <p>7 A. No.</p> <p>8 Q. Where is Mr. Johnson today? And I say</p> <p>9 that hoping you are not going to say he's no</p> <p>10 longer living.</p> <p>11 A. I honestly don't know where he is.</p> <p>12 Q. Okay. Well, hopefully he's alive and</p> <p>13 well someplace. Okay. So you don't know</p> <p>14 where Mr. Johnson is today. But he has no --</p> <p>15 he doesn't have any working relationship or</p> <p>16 consulting relationship at this point with</p> <p>17 Michael Foods to the best of your knowledge?</p> <p>18 A. To the best of my knowledge, he does not.</p> <p>19 Q. Okay. So if you'll look at the second</p> <p>20 paragraph of the document that I've put in</p> <p>21 front of you, it says: Basically the animal</p> <p>22 welfare-related issues, open paren,</p> <p>23 guidelines, et cetera, close paren, are hashed</p> <p>24 out in the committee and brought to the board</p> <p>25 for approval.</p>

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<p>1 What board is being referenced here?</p> <p>2 A. The UEP board of directors.</p> <p>3 Q. Okay. Were you ever a member of the UEP</p> <p>4 board of directors?</p> <p>5 A. Yes, I was.</p> <p>6 Q. Okay. And from when to when were you a</p> <p>7 member of the UEP board of directors?</p> <p>8 A. It was a short period around the year</p> <p>9 2000.</p> <p>10 Q. And not since then?</p> <p>11 A. No.</p> <p>12 Q. Is there anyone that was on the UEP board</p> <p>13 of directors from Michael Foods after you</p> <p>14 between now -- between your completion as a</p> <p>15 member of the board and today?</p> <p>16 A. Terry Baker is on the board and has been</p> <p>17 for some time.</p> <p>18 Q. Do you know -- do you have an</p> <p>19 understanding as you sit here today when he</p> <p>20 joined the board?</p> <p>21 A. No.</p> <p>22 Q. Is it your understanding that he has been</p> <p>23 on the board continuously throughout that</p> <p>24 period?</p> <p>25 A. I don't know that.</p>	<p>1 A. On behalf of Michael Foods.</p> <p>2 Q. Okay. So if we continue in that second</p> <p>3 paragraph, it says: Over time, the committee</p> <p>4 has dealt with, open paren, what I would</p> <p>5 consider, close paren, marketing-type issues</p> <p>6 along with bird welfare guideline stuff, which</p> <p>7 I would question whether that has been</p> <p>8 appropriate, i.e., the 100 percent rule. For</p> <p>9 the most part, the committee works out the</p> <p>10 on-farm-related stuff.</p> <p>11 Have I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. When you say "marketing-type</p> <p>14 issues," what do you mean?</p> <p>15 A. I really don't know what I meant by that.</p> <p>16 Q. Can you tell me what you think it means</p> <p>17 as you sit here today?</p> <p>18 MR. GREENE: I'll object. It calls</p> <p>19 for speculation.</p> <p>20 THE WITNESS: Possibly affecting</p> <p>21 the supply.</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. Okay. And just so that the record is</p> <p>24 clear, you don't know what you meant by</p> <p>25 marketing-type issues when you wrote this in</p>
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<p>1 Q. Is he on the UEP board of directors</p> <p>2 today?</p> <p>3 A. Yes, he is.</p> <p>4 Q. And just for a little bit of background,</p> <p>5 I think you testified under examination by</p> <p>6 Mr. Kinney earlier today that you are now a</p> <p>7 consultant to Michael Foods, right?</p> <p>8 A. Correct.</p> <p>9 Q. And you've been that for the last</p> <p>10 18 days, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Are you still a member of the UEP? When</p> <p>13 I say "you," do you still attend meetings and</p> <p>14 intend to attend meetings and the like?</p> <p>15 A. Well, I haven't since July 1st, but I</p> <p>16 plan to.</p> <p>17 Q. And when you plan to -- well, withdrawn.</p> <p>18 So, for example, if there's a UEP meeting</p> <p>19 in August of 2013, would it be your intentions</p> <p>20 to attend?</p> <p>21 A. Yes, it would.</p> <p>22 Q. And when you attend meetings going</p> <p>23 forward is it your intention to attend on</p> <p>24 behalf of Michael Foods or on behalf of</p> <p>25 yourself personally?</p>	<p>1 2007?</p> <p>2 A. That is correct.</p> <p>3 Q. Okay. And then when you say: Along with</p> <p>4 bird welfare guideline stuff, which I would</p> <p>5 question whether that has been appropriate,</p> <p>6 i.e., the 100 percent rule, what is it that</p> <p>7 you were questioning whether it was</p> <p>8 appropriate with respect to the 100 percent</p> <p>9 rule?</p> <p>10 A. I believe it to be whether or not all of</p> <p>11 the farms had to be signed on versus a</p> <p>12 customer requested situation.</p> <p>13 Q. Okay. And then you'll see that the</p> <p>14 second paragraph -- or the third paragraph of</p> <p>15 the document but the second paragraph that</p> <p>16 we're reading says: Our main issue with the</p> <p>17 program is the 100 percent rule.</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. I read that correctly?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. When you say "our," you mean --</p> <p>23 that's Michael Foods, not -- isn't that right?</p> <p>24 When you say "our," you are referring to "our"</p> <p>25 as Michael Foods, right?</p>

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<p>1 A. That was the opinion at the time, yes.</p> <p>2 Q. Okay.</p> <p>3 A. That was our issue.</p> <p>4 Q. Right. "Thankfully it was officially</p> <p>5 determined by UEP legal counsel about one and</p> <p>6 a half years ago that the birds that produces</p> <p>7 our procured eggs do not have to be on the</p> <p>8 program, is that right? I read that</p> <p>9 correctly?</p> <p>10 A. Yes.</p> <p>11 Q. And when you were talking about the UEP</p> <p>12 legal counsel, who in particular were you</p> <p>13 referring to?</p> <p>14 A. I don't remember who it was at that time.</p> <p>15 Q. Is it possible it was Irv Isaacson?</p> <p>16 A. It is possible.</p> <p>17 Q. Is it possible it was Kevin Haley?</p> <p>18 A. It is possible. I don't know the timing.</p> <p>19 Q. Just so that we're clear -- and I think</p> <p>20 you testified to this under examination from</p> <p>21 Mr. Kinney, but let's just make sure we've got</p> <p>22 it clear. Irv Isaacson was not your personal</p> <p>23 lawyer, is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And he also was not the lawyer for</p>	<p>1 case or is that now the case?</p> <p>2 A. It's all --</p> <p>3 MR. GREENE: Objection, confusing.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Did you understand my question?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. It's always been the case.</p> <p>9 Q. Mr. Bebee, are you familiar with a person</p> <p>10 by the name of Bill Goucher or it may be</p> <p>11 "Goucher"? I'm not sure how it's pronounced.</p> <p>12 A. I am familiar with him, yes.</p> <p>13 Q. Is it pronounced "Goucher" or "Goucher"?</p> <p>14 A. "Goucher."</p> <p>15 Q. You are familiar with Mr. Goucher?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Who is Mr. Goucher?</p> <p>18 A. Former president of Michael Foods Egg</p> <p>19 Products Company.</p> <p>20 Q. And is Mr. Goucher at all affiliated with</p> <p>21 the company? When I say "company," I mean</p> <p>22 Michael Foods today.</p> <p>23 A. I don't know that.</p> <p>24 Q. You don't know if he's affiliated with</p> <p>25 the company or not?</p>
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<p>1 Michael Foods at any time, correct?</p> <p>2 A. To the best of my knowledge, that's</p> <p>3 correct.</p> <p>4 Q. Okay. And Kevin Haley is not your</p> <p>5 personal lawyer, is he?</p> <p>6 A. That would be correct.</p> <p>7 Q. And he was never, to the best of your</p> <p>8 knowledge, the personal attorney -- or the</p> <p>9 company's attorney for Michael Foods, is that</p> <p>10 correct?</p> <p>11 A. To the best of my knowledge, that's</p> <p>12 correct.</p> <p>13 Q. Now, again, reading this second sentence</p> <p>14 of this third paragraph: Thankfully it was</p> <p>15 officially determined by UEP legal counsel</p> <p>16 about one and a half years ago that the birds</p> <p>17 that produces our procured eggs do not have to</p> <p>18 be on the program.</p> <p>19 To the best of your knowledge, is that</p> <p>20 still the case today, that your procured eggs</p> <p>21 do not have to be UEP Certified?</p> <p>22 A. I can tell you that they don't have to</p> <p>23 be. It's not a mandatory program, yes.</p> <p>24 Q. Okay. And when you say "it's not a</p> <p>25 mandatory program," has that always been the</p>	<p>1 A. Correct.</p> <p>2 Q. Is he still employed by Michael Foods?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Do you know if he has any professional</p> <p>5 relationship at the moment with Michael Foods?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know if he has a professional</p> <p>8 relationship with at all with any of the</p> <p>9 Michael Foods wholly-owned subsidiaries?</p> <p>10 A. I do not.</p> <p>11 Q. Do you know where Mr. Goucher is today?</p> <p>12 A. I heard that he lives in Kansas City.</p> <p>13 Don't know if that's true or current.</p> <p>14 Q. Do you maintain any personal relationship</p> <p>15 at all with Mr. Goucher or with Dave Johnson?</p> <p>16 A. No.</p> <p>17 (Exhibit Number 7 marked for</p> <p>18 identification.)</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. Mr. Bebee, I'm showing you what's been</p> <p>21 marked as Bebee 7 for purposes of</p> <p>22 identification. It's a single-page email from</p> <p>23 you to Bill Goucher with the Michael Foods</p> <p>24 MFI legend at the bottom 0321771. It's an</p> <p>25 email dated October 9th, 2000 from you to Bill</p>

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<p>1 Goucher. The subject is UEP. It says: Just</p> <p>2 a reminder that I am going to the UEP meeting</p> <p>3 today through Friday. Interesting note, just</p> <p>4 found out that I was not re-elected to be on</p> <p>5 the board this coming year.</p> <p>6 You see where I read that?</p> <p>7 A. Yes.</p> <p>8 Q. I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have an understanding as to why</p> <p>11 you weren't re-elected to be on the board?</p> <p>12 A. Only speculation.</p> <p>13 Q. And what's the best -- your best</p> <p>14 knowledge as to why you weren't re-elected to</p> <p>15 be on the board? Why do you think you weren't</p> <p>16 re-elected to be on the board?</p> <p>17 A. Too much pushback.</p> <p>18 Q. On what issues?</p> <p>19 A. Animal welfare.</p> <p>20 Q. When you say "too much pushback," what do</p> <p>21 you mean you had too much pushback on animal</p> <p>22 welfare issues?</p> <p>23 A. Disagreement.</p> <p>24 Q. And when you say "disagreement," you are</p> <p>25 talking about a disagreement with the UEP?</p>	<p>1 participate in the export and marketing</p> <p>2 program?</p> <p>3 A. That is correct, I don't.</p> <p>4 Q. If I said would Sparboe Farms be one of</p> <p>5 those people, would that refresh your</p> <p>6 recollection?</p> <p>7 A. No, it would not. I have no idea who.</p> <p>8 Q. You have no --</p> <p>9 A. I have no idea.</p> <p>10 Q. Is there anything that you can think of,</p> <p>11 Mr. Bebee, that I could put in front of you</p> <p>12 that might refresh your recollection as to who</p> <p>13 were the other procedures that didn't like the</p> <p>14 fact that you wouldn't agree on and</p> <p>15 participate in the export and marketing</p> <p>16 programs?</p> <p>17 A. I don't know what it would be.</p> <p>18 Q. Okay. Do you know a gentleman,</p> <p>19 Mr. Bebee, by the name of Mike Bynum?</p> <p>20 A. Yes, I do.</p> <p>21 Q. Who is Mike Bynum?</p> <p>22 A. Past president of UEP.</p> <p>23 Q. Okay. And is Mr. -- when you say "past</p> <p>24 president," do you know from when Mr. Bynum</p> <p>25 was the president of UEP?</p>
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<p>1 A. UEP, direction they were headed.</p> <p>2 Q. Okay. And that -- I assume that by</p> <p>3 association you disagreed not only with the</p> <p>4 UEP but also with UEP members that were</p> <p>5 following the UEP instructions, correct?</p> <p>6 A. I believe that would be safe to say, yes.</p> <p>7 Q. Okay. And then the second paragraph --</p> <p>8 the second sentence of this email says: Got a</p> <p>9 feeling that other producers don't like the</p> <p>10 fact that we don't agree on and participate in</p> <p>11 the export and marketing programs.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. Yes, you did.</p> <p>16 Q. Which producers in particular were you</p> <p>17 referencing in this email?</p> <p>18 A. I have no idea.</p> <p>19 Q. When you say you have no idea, you</p> <p>20 obviously had an idea at the time, right?</p> <p>21 A. It appears so. That's what the email</p> <p>22 states.</p> <p>23 Q. But as you sit here today you have no</p> <p>24 recollection of which producers didn't like</p> <p>25 the fact that you wouldn't agree on and</p>	<p>1 A. No, I don't.</p> <p>2 Q. When to when?</p> <p>3 A. No.</p> <p>4 Q. Do you know where -- is Mr. Bynum, to the</p> <p>5 best of your knowledge, associated with the</p> <p>6 UEP at the present time?</p> <p>7 A. I haven't seen or heard of him for</p> <p>8 several years. So --</p> <p>9 Q. Is it fair to say that you had no contact</p> <p>10 with him recently?</p> <p>11 A. That would be fair to say.</p> <p>12 Q. He doesn't attend UEP meetings any</p> <p>13 longer?</p> <p>14 A. I have not seen him for several years.</p> <p>15 Q. Okay.</p> <p>16 (Exhibit Number 8 marked for</p> <p>17 identification.)</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Mr. Bebee, I'm showing you what's been</p> <p>20 marked as Bebee 8 for purposes of</p> <p>21 identification. It's a single-page email from</p> <p>22 Gene to Tim Bebee, subject: Reply to your</p> <p>23 email. It has a dual Bates number on it. One</p> <p>24 is Bates number is MFN017794. It also is</p> <p>25 Bates stamped MFI0111596. It's an email dated</p>

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<p>1 January 3rd, 2003. Give you a few seconds to 2 take a look at it, then I'm going to ask you a 3 couple of questions based upon the second 4 paragraph. 5 A. (Reviews document.) 6 Q. All set, Mr. Bebee? 7 A. Yes. 8 Q. Okay. First, you see that this is from 9 Gene and then there is an email address, which 10 is g_greg@mindspring.com. 11 Do you see where I am reading? 12 A. Yes. 13 Q. To the best of your knowledge, is that 14 Gene Gregory? 15 A. To the best of my knowledge, it is. 16 Q. And Gene Gregory is who? 17 A. He is the executive director of United 18 Egg Producers. 19 Q. Okay. And you'll see that in the second 20 paragraph it says: Mike Bynum, as UEP's new 21 chairman, felt that the members of the animal 22 welfare committee hereafter should be those 23 that have signed onto the program and are 24 implementing UEP's guidelines. Since Michael 25 Foods has not signed onto the program, you</p>	<p>1 Q. Okay. Let me say it better. I won't say 2 re-elected. I'll say appointed. You weren't 3 appointed to the animal welfare committee, 4 correct? 5 A. That's a correct term, yes. 6 Q. And is it your understanding based upon 7 this that in addition to -- withdrawn. 8 Is it your understanding that in addition 9 to not signing onto the UEP certification -- 10 well, withdrawn. 11 Is it also your opinion that part of that 12 was Michael Foods' reluctance to become 13 100 percent compliant in accordance with the 14 100 percent rule? 15 MR. GREENE: Objection, confusing. 16 BY MR. ARANOFF: 17 Q. Do you understand what I am asking you? 18 A. Yes, I understand. 19 Q. Okay. 20 A. I'm not exactly sure of the timing of all 21 of those issues. 22 Q. Okay. 23 A. We were not pleased with the 100 percent 24 rule. 25 Q. And is it your understanding as you sit</p>
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<p>1 were not reassigned to this committee. 2 So does this refresh your recollection as 3 to, first, when Mike Bynum became the UEP's 4 new chairman, at least roughly? 5 A. That's the way it reads, yes. 6 Q. And so that's roughly January of 2003, 7 right? 8 A. Yes. 9 Q. Okay. And does this also refresh your 10 recollection as to why you weren't re-elected 11 to the animal welfare committee? 12 A. Yes, it does. 13 Q. Okay. And what is your understanding 14 here based on this document as to why you 15 weren't re-elected to the animal welfare 16 committee? 17 A. Since we weren't signed onto the 18 certified program, they wanted to keep me off 19 the committee. 20 Q. So it's fair to say that since you 21 weren't signed onto the UEP certification 22 program, you weren't re-elected to the animal 23 welfare committee, correct? 24 A. Well, I was re-elected. I don't remember 25 the time frame of it.</p>	<p>1 here today that one of the reasons why you 2 weren't appointed back onto the animal welfare 3 committee was because Michael Foods refused to 4 comply with the 100 percent rule? 5 MR. DAVIS: Objection. 6 THE WITNESS: I don't recall if at 7 this point in time that was the issue or not. 8 BY MR. ARANOFF: 9 Q. Did it later become an issue? 10 A. Yes. 11 Q. And is it fair to say that later you were 12 not appointed to the animal welfare committee 13 because of Michael Foods' reluctance and 14 refusal to comply with the 100 percent rule? 15 A. I don't know that. 16 MR. GREENE: Object, lack of 17 foundation. 18 Go ahead. 19 BY MR. ARANOFF: 20 Q. You don't know that. Okay. 21 MR. GREENE: Can I whisper to the 22 witness about a break for a moment? 23 MR. ARANOFF: Sure. 24 THE VIDEOGRAPHER: Off record. 25 The time is 12:27.</p>

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<p>1 (Off the record.)</p> <p>2 (Exhibit Number 9 marked for</p> <p>3 identification.)</p> <p>4 THE VIDEOGRAPHER: We are back on</p> <p>5 the record.</p> <p>6 The time is 12:35.</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. Mr. Bebee, I'm handing you what's been</p> <p>9 marked as Bebee 9 for purposes of</p> <p>10 identification. This is a single-page email</p> <p>11 purportedly from Gene Gregory.</p> <p>12 We established that before, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. From Gene Gregory to you with a cc</p> <p>15 to Garth Sparboe, subject is Committee. And</p> <p>16 it's dated January 28th, 2003. It bears the</p> <p>17 Bates stamp MFI0111594.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And just it's a one-sentence</p> <p>21 email. Just take a read-through of it and</p> <p>22 then I'll ask you a question.</p> <p>23 A. (Reviews document.) Okay. I'm ready.</p> <p>24 Q. Okay. Tim -- the email says: Tim, Have</p> <p>25 heard from Mike Bynum and he is agreeable to</p>	<p>1 (Exhibit Number 10 marked for</p> <p>2 identification.)</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. I'm going to hand you what's been marked</p> <p>5 Bebee 10 for purposes of identification.</p> <p>6 Do you have it in front of you,</p> <p>7 Mr. Bebee?</p> <p>8 A. Yes, I do.</p> <p>9 Q. For identification, this is an email from</p> <p>10 you to an email address, which is: Internal</p> <p>11 quote, rshinn@neb-sandhills.net, close</p> <p>12 internal quote. The subject is Layer Industry</p> <p>13 Info. It's dated March 5th, 2002. It bears</p> <p>14 Bates stamp MFI0321979.</p> <p>15 Give you a minute to take a look at this.</p> <p>16 But before I do, do you have any idea who you</p> <p>17 sent this email to on the basis of the email</p> <p>18 address in the To line?</p> <p>19 A. Yes, it's Rich Shinn.</p> <p>20 Q. And who is Rich Shinn?</p> <p>21 A. Turkey producer in Nebraska.</p> <p>22 Q. Do you know what company Mr. Shinn is</p> <p>23 with?</p> <p>24 A. I believe the name of his company was</p> <p>25 Shinn's Turkeys, but I'm not sure of that.</p>
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<p>1 putting you back on the animal welfare</p> <p>2 committee. Gene.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. I read that correctly?</p> <p>6 A. Yes, you did.</p> <p>7 Q. Do you have -- again, Mike Bynum is the</p> <p>8 chairman of the UEP at this time?</p> <p>9 A. The email earlier would tell us that,</p> <p>10 yes.</p> <p>11 Q. Okay. And do you have an understanding</p> <p>12 as you sit here today as to why you were put</p> <p>13 back on the animal welfare committee in</p> <p>14 January of 2003?</p> <p>15 A. Only speculation.</p> <p>16 Q. Okay. And what is your best</p> <p>17 understanding as to why you were put back on</p> <p>18 the animal welfare committee?</p> <p>19 MR. GREENE: Objection, lack of</p> <p>20 foundation.</p> <p>21 THE WITNESS: Pushback.</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. Pushback from who?</p> <p>24 A. Me.</p> <p>25 Q. Okay.</p>	<p>1 Q. I would have guessed Sandhills, but that</p> <p>2 just goes to show you. All right. Anyway.</p> <p>3 Okay. So it's -- okay. Take a look at</p> <p>4 the -- my -- just take a read-through and</p> <p>5 we'll go from there. It's just a short</p> <p>6 document.</p> <p>7 A. (Reviews document.) Okay.</p> <p>8 Q. Okay. It says -- first line says: Shell</p> <p>9 egg industry situation.</p> <p>10 Do you see that?</p> <p>11 A. I see that.</p> <p>12 Q. Do you have an understanding as you sit</p> <p>13 here today about what the shell egg industry</p> <p>14 situation that you are responding to is?</p> <p>15 A. Exactly what it says.</p> <p>16 Q. Okay. So it says: The industry in</p> <p>17 oversupply causing depressed market prices for</p> <p>18 many companies below cost of production.</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Okay. And is it fair to say that that is</p> <p>22 the shell egg industry situation that you are</p> <p>23 reporting to Mr. Shinn about?</p> <p>24 A. Yes, that would appear to be safe to say.</p> <p>25 Q. Okay. Then the document continues:</p>

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<p>1 Sales volumes are down in general due to the</p> <p>2 economy and 9/11.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And then if you skip down a couple of</p> <p>6 paragraphs, it says: For this reason, the</p> <p>7 companies are demanding changes on the farms;</p> <p>8 more spaces per bird in the cages, cease</p> <p>9 forced molting, stricter air quality standards</p> <p>10 in the buildings, to name a few.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Are these, to the best of your</p> <p>14 knowledge, changes that were implemented as a</p> <p>15 result of the shell egg industry situation?</p> <p>16 MR. GREENE: Object to the way that</p> <p>17 document was excerpted as it was read to the</p> <p>18 witness.</p> <p>19 MR. ARANOFF: Okay.</p> <p>20 THE WITNESS: Would you repeat the</p> <p>21 question.</p> <p>22 MR. ARANOFF: Can we have that</p> <p>23 back.</p> <p>24 (Whereupon, the court reporter read</p> <p>25 back the previous question.)</p>	<p>1 Q. And what did you mean when you said it is</p> <p>2 turning into a contest with the chain</p> <p>3 companies?</p> <p>4 A. Some of the companies implemented their</p> <p>5 own program. For example, Burger King, who we</p> <p>6 supply, implemented their own welfare</p> <p>7 guidelines.</p> <p>8 Q. And when you say chain --</p> <p>9 MR. GREENE: Do you want me to let</p> <p>10 them in?</p> <p>11 MR. ARANOFF: Yeah.</p> <p>12 (Off the record.)</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Right before the gentleman came into the</p> <p>15 room, I was going to ask you: When you are</p> <p>16 talking about chain companies, you are</p> <p>17 referencing franchise chains like Burger King,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. Those kind of companies?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And then the next paragraph down</p> <p>23 says: Many in the industry think this will</p> <p>24 correct the oversupply situation, open paren,</p> <p>25 birds taken from cages to give more space thus</p>
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<p>1 THE WITNESS: No.</p> <p>2 BY MR. ARANOFF:</p> <p>3 Q. They were not?</p> <p>4 A. No.</p> <p>5 Q. Okay. It then says: The industry,</p> <p>6 United Egg Producers, has been working on</p> <p>7 changing standards based on science, but many</p> <p>8 of the companies are using their own</p> <p>9 standards. It is turning into a contest with</p> <p>10 the chain companies. UEP has developed a</p> <p>11 phase-in period, open paren, less birds per</p> <p>12 cage, close paren.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you have an understanding as</p> <p>16 you sit here today about what you meant when</p> <p>17 you said: The industry, open paren, United</p> <p>18 Egg Producers, close paren, has been working</p> <p>19 on changing standards based on science? What</p> <p>20 does that mean?</p> <p>21 A. That means that the producers, United Egg</p> <p>22 Producers are listening to the scientific</p> <p>23 committee and their recommendations to take</p> <p>24 into consideration for guidelines on animal</p> <p>25 welfare care.</p>	<p>1 reducing the overall bird numbers. One</p> <p>2 problem is if and when this happens, the</p> <p>3 market may firm up and people will start</p> <p>4 expanding again. In a few years time the</p> <p>5 supply and demand situation could be back to a</p> <p>6 problem.</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Did that accurately reflect your opinion</p> <p>10 as of March of 2002?</p> <p>11 A. It must have. I wrote it.</p> <p>12 Q. Okay.</p> <p>13 (Exhibit Number 11 marked for</p> <p>14 identification.)</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. I handed you, Mr. Bebee, what's been</p> <p>17 marked as Bebee 11 for purposes of</p> <p>18 identification. It's a three-page document</p> <p>19 with a cover email up front. And it's dual</p> <p>20 Bates numbered, begins with MFC00157940. It</p> <p>21 also begins with MFI0052008. Continues</p> <p>22 sequentially through MFC00157941_00002 as well</p> <p>23 as MFI0052010.</p> <p>24 I think I forgot to mention my primary</p> <p>25 focus will be the fifth -- last part of the</p>

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<p>1 fifth paragraph and then beginning on the 2 bottom of the page "So you ask how..." 3 through the first full paragraph on the next 4 page. Sorry about that. 5 A. (Reviews document.) Okay. 6 Q. So this is an email from Gene Gregory. 7 You are -- it's sent to you among other 8 people, correct? 9 A. Yes. 10 Q. Okay. Just real quick, do you know who 11 Kurt Kreher is? 12 A. Yes. 13 Q. Who is Kurt Kreher? 14 A. An egg producer -- 15 Q. With what company? 16 A. -- on the East Coast. I believe the name 17 of the company is Kreher's Eggs. 18 Q. Okay. And who is Bob Krouse? 19 A. Another egg producer from Indiana. 20 Q. Do you know what company? 21 A. Midwest Poultry, I believe. 22 Q. All right. And Kurt Lausecker? 23 A. Yes. 24 Q. Do you know who he is? Who's he? 25 A. He's a producer that used to be with a</p>	<p>1 I'm not sure. 2 Q. Tim Bebee is you obviously, right? 3 A. I believe so. 4 Q. Bob Gornichec, do you know him? 5 A. Yes. 6 Q. Where is he from? 7 A. I don't remember the name of his company. 8 Q. Dave Rettig? 9 A. Yes. 10 Q. What company is he from? 11 A. Rembrandt Enterprises. 12 Q. And the last name is KY Hendrix, right? 13 A. K.Y. 14 Q. He goes by K.Y. or does he go by KY? 15 A. K.Y. Rose Acre Farms. 16 Q. And it's cc'd to Chad Gregory. Do you 17 know who Chad Gregory is? 18 A. Yes, I do. 19 Q. And he's related to Gene Gregory? 20 A. Yes, he is. 21 Q. He's his son? 22 A. Yes, he is. 23 Q. Does he have a position at the UEP? 24 A. Yes, he does. 25 Q. What's his position there?</p>
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<p>1 company by the name of Day Lay. 2 Q. Okay. Steve Storm? 3 A. Yes. He is with Cal-Maine Foods. 4 Q. Okay. Mike Bynum, I skipped him. But 5 Mike Bynum, correct, he's the UEP chairman we 6 referenced before, right? 7 A. Not at this time in '02. 8 Q. But it's the same person, right? 9 A. Yes. 10 Q. And Joe Fortin, he's with Moark, is that 11 right? 12 A. I believe that's right. 13 Q. Okay. Garth Sparboe is with Sparboe 14 Farms? 15 A. That's correct. 16 Q. David Thompson, do you know who he is? 17 A. I don't remember the name of his company. 18 Q. But he's, to the best of your knowledge, 19 an egg producer? 20 A. Egg producer in Illinois. 21 Q. Joe Arias? 22 A. He's an egg producer from Texas. 23 Q. Do you know what company? 24 A. Or no, it's not Texas. I don't think 25 that's correct. Valley Fresh Foods possibly.</p>	<p>1 A. Currently he is the president. 2 Q. Okay. And the subject of this email from 3 Gene -- this cover email from Gene Gregory to 4 all the people we just talked about, right, is 5 in all caps: You should implement guidelines, 6 right? 7 A. That's what it says. 8 Q. Okay. Now, if you look at the second 9 page of the document, again at the top in all 10 caps and I believe in bold it also says: You 11 should implement guidelines, an editorial by 12 Gene Gregory. 13 Although an editorial by Gene Gregory is 14 not in caps, right? 15 A. Yes. Correct. 16 Q. If you look at the fifth paragraph, the 17 last sentence says: As we reduce the flock 18 size, hopefully profits will be realized which 19 can be reinvested in this new construction. 20 Do you see that? 21 A. I see that. 22 Q. And so is it fair to say that Gene 23 Gregory at the time was recommending the 24 reduction of flock size? 25 MR. DAVIS: Objection to form,</p>

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<p>1 calls for speculation.</p> <p>2 THE WITNESS: It would appear so.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Okay. And then you'll see in the second</p> <p>5 to last paragraph or the last full paragraph</p> <p>6 on that same page it says: So you ask how I</p> <p>7 will recover my cost? A special committee has</p> <p>8 been established for the purpose of developing</p> <p>9 a price discovery system that will allow eggs</p> <p>10 from certified companies to be traded and for</p> <p>11 the market reporter to publish a separate</p> <p>12 quote for certified eggs.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. And again, to the best of your knowledge,</p> <p>18 this is what Gene Gregory was recommending to</p> <p>19 the UEP members?</p> <p>20 MR. DAVIS: Objection, calls for</p> <p>21 speculation.</p> <p>22 THE WITNESS: It's what's stated.</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. Okay. And just so that we're clear, when</p> <p>25 it talks about -- do you know what was meant</p>	<p>1 A. Yes.</p> <p>2 Q. Aside from the coughing attack I had, did</p> <p>3 I read that correctly?</p> <p>4 A. You did.</p> <p>5 Q. And is it your understanding that this</p> <p>6 was -- reflects a recommendation made by Gene</p> <p>7 Gregory to UEP members?</p> <p>8 MR. DAVIS: Objection, calls for</p> <p>9 speculation, misstates the document.</p> <p>10 THE WITNESS: Those words are put</p> <p>11 in print. That's all I can verify.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. And they were put in print by Gene</p> <p>14 Gregory?</p> <p>15 A. Yes.</p> <p>16 Q. And to the best of your knowledge, they</p> <p>17 were disseminated to all of the folks that we</p> <p>18 talked about earlier when we started</p> <p>19 referencing the document, in particular,</p> <p>20 Mr. Fortin, Mr. Kreher, Mr. Krouse, Mr. Bynum,</p> <p>21 Mr. Lausecker, Mr. Storm, Mr. Sparboe,</p> <p>22 Mr. Thompson, Mr. Arias, you, Mr. Bebee, Bob</p> <p>23 Gornichec, Mr. Rettig, Mr. Hendrix with a copy</p> <p>24 to Chad Gregory, correct?</p> <p>25 A. That is what the email shows us.</p>
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<p>1 by price discovery system?</p> <p>2 A. No.</p> <p>3 MR. DAVIS: Objection, calls for</p> <p>4 speculation.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Okay. Do you know what a market reporter</p> <p>8 is?</p> <p>9 MR. DAVIS: Same objection.</p> <p>10 THE WITNESS: No, I don't.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Okay. And then the next paragraph says:</p> <p>13 There, however, is another way to recover the</p> <p>14 cost. Some may think of this as only a supply</p> <p>15 adjustment program and those that implement</p> <p>16 the guidelines will realize an increased cost</p> <p>17 while those that stand on the sideline will</p> <p>18 benefit equally. So let's just review the</p> <p>19 costs of the first step of the phase-in plan.</p> <p>20 Remember that this step calls for chicks</p> <p>21 hatched after April 1st, 2002 and before</p> <p>22 October 1st, 2003 to place those pullets in</p> <p>23 the layer house at a "house average" of</p> <p>24 56 inches per hen.</p> <p>25 Do you see that?</p>	<p>1 MR. ARANOFF: Let's take the lunch</p> <p>2 break now and then we'll go from there.</p> <p>3 THE VIDEOGRAPHER: This is the end</p> <p>4 of disk two in the deposition of Tim Bebee.</p> <p>5 We are off the record at 12:54.</p> <p>6 (Lunch break taken at 12:54 p.m.)</p> <p>7</p> <p>8 AFTERNOON SESSION, 1:48 p.m.</p> <p>9</p> <p>10 THE VIDEOGRAPHER: This is the</p> <p>11 beginning of disk three in the deposition of</p> <p>12 Timothy Bebee.</p> <p>13 We are back on the record at 1:48.</p> <p>14 MR. ARANOFF:</p> <p>15 Q. Mr. Bebee, you had an opportunity to have</p> <p>16 lunch?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Did you discuss your testimony at all,</p> <p>19 the substance of your testimony with anyone</p> <p>20 during the lunch break?</p> <p>21 A. No.</p> <p>22 (Exhibit Number 12 marked for</p> <p>23 identification.)</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Mr. Bebee, the court reporter has placed</p>

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<p>1 in front of you what's been marked as Bebee 12</p> <p>2 for purposes of identification. This is a --</p> <p>3 the first page is a cover email from</p> <p>4 Terry Baker to J.D. Clarkson and Gregg</p> <p>5 Ostrander with a cc to Toby Catherman and to</p> <p>6 yourself dated April 16th, 2005. The entire</p> <p>7 document is Bates stamped MFI0027797 and it</p> <p>8 continues continuously through MFI0027801.</p> <p>9 First, if you take a look at the</p> <p>10 document, Mr. Bebee, you'll see at the upper</p> <p>11 left-hand corner in bold it says: Bebee, Tim</p> <p>12 J., correct?</p> <p>13 A. (Reviews document.) Yes.</p> <p>14 Q. So is it fair to say that this came out</p> <p>15 of your production, to the best of your</p> <p>16 knowledge, it came off of your email?</p> <p>17 A. It appears so, yes.</p> <p>18 Q. Now, if you will look at page 2 of the</p> <p>19 document, you'll see that it says UEP Animal</p> <p>20 Welfare Committee, Tuesday, April 19th, 2005,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recognize this document? I</p> <p>24 realize I may not have given you a chance to</p> <p>25 look at it. So why don't I do that.</p>	<p>1 Q. Are you aware of any difference between</p> <p>2 ACC and AWP or animal welfare program?</p> <p>3 A. No.</p> <p>4 Q. So in your mind they are one in the same?</p> <p>5 A. Yes.</p> <p>6 Q. And do you believe that to be the case</p> <p>7 among those of you that are in the industry?</p> <p>8 MR. DAVIS: Objection, calls for</p> <p>9 speculation.</p> <p>10 THE WITNESS: I can't speak for</p> <p>11 others in the industry.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Okay. Now, turning to page 2. At the</p> <p>14 top of the page it says UEP Animal Welfare</p> <p>15 Committee, right?</p> <p>16 A. It does say that, yes.</p> <p>17 Q. And it's dated Tuesday, April 19th, 2005?</p> <p>18 A. Yes.</p> <p>19 Q. And then beneath it it says: Discussion</p> <p>20 of alternative to Atlanta motions on ACC</p> <p>21 marketing by non-certified producers and</p> <p>22 marketers, right?</p> <p>23 A. Yes, it does say that.</p> <p>24 Q. I read that correctly?</p> <p>25 A. Yes, you did.</p>
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<p>1 A. (Reviews document.)</p> <p>2 Q. Have you had a chance to look at it?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. All right. But first, just</p> <p>5 turning back to the first page of the</p> <p>6 document, the subject of the cover email is</p> <p>7 UEP ACC Update.</p> <p>8 Do you see where I am reading?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And UEP is United Egg Producers,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. What does ACC stand for?</p> <p>14 A. I believe it stands for the animal</p> <p>15 welfare program.</p> <p>16 Q. If I said to you that it stood for the</p> <p>17 animal care -- animal care certified, would</p> <p>18 that be an accurate description of that</p> <p>19 mnemonic?</p> <p>20 A. I believe that would be right, yes.</p> <p>21 Q. And is there any distinction in your</p> <p>22 mind, Mr. Bebee, between the animal welfare</p> <p>23 program and animal care certified as indicated</p> <p>24 in the subject line of this email?</p> <p>25 A. Not in my mind, no.</p>	<p>1 Q. And below that are two motions, right:</p> <p>2 Motion number 2 - it was moved by Oldenkamp</p> <p>3 and seconded by Fortin to approve the preamble</p> <p>4 and motion stating: Colon, open quote, bold,</p> <p>5 In order to protect the integrity of the ACC</p> <p>6 program and logo and in view of the difficulty</p> <p>7 in preventing the commingling of certified</p> <p>8 eggs with non-certified eggs and to treat all</p> <p>9 egg producers equal, it is hereby moved that</p> <p>10 no new licenses to market animal care</p> <p>11 certified eggs will be issued or renewed to</p> <p>12 producers who are not ACC certified, period,</p> <p>13 close quote, close bold.</p> <p>14 And then it says the motion carried with</p> <p>15 a vote of 19 yes and eight nos.</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. I read it correctly?</p> <p>19 A. Yes, you did.</p> <p>20 Q. Then there is: Motion number 3 - It was</p> <p>21 moved by Oldenkamp and seconded by Clanton</p> <p>22 that, open bold, open quote, a license to</p> <p>23 market ACC eggs may be issued to shell egg</p> <p>24 processors and further egg processors who do</p> <p>25 not own or operate egg production facilities,</p>

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<p>1 period, close quote, close bold. The motion 2 carried with 26 yes and two no votes. 3 Do you see that? 4 A. Yes. 5 Q. And I read that correctly? 6 A. Yes. 7 Q. Beneath it you'll see that there are 8 reasons for motions. 9 Do you see that? 10 A. Yes. 11 Q. And by the way, do you have an 12 understanding as you sit here today as to who 13 drafted this document? 14 A. No. 15 Q. Had you seen documents like this before? 16 A. I've seen minutes of meetings. 17 Q. But have you ever seen a document that 18 would be similar or identical to a discussion 19 of alternatives to any UEP initiatives? 20 A. Would you repeat the question. 21 MR. ARANOFF: Can I have that back, 22 please. 23 (Whereupon, the court reporter read 24 back the previous question.) 25 THE WITNESS: Are you asking me</p>	<p>1 would be the same as saying effort to gain 2 compliance with the 100 percent rule? 3 MR. GREENE: Objection, lack of 4 foundation. 5 THE WITNESS: Not necessarily. 6 BY MR. ARANOFF: 7 Q. Okay. Do you see on number 3 where it 8 says, "Reaction to the marketplace where in a 9 non-certified marketer can offer a discount on 10 shell eggs which are not ACC versus ACV"? 11 A. I see that. 12 Q. Do you have an understanding about what 13 that means? 14 A. Yes. 15 Q. What does that mean? 16 MR. DAVIS: Objection, calls for 17 speculation. 18 THE WITNESS: In my opinion, it's 19 just an issue where ACC certified eggs may be 20 mixed with conventional eggs -- 21 BY MR. ARANOFF: 22 Q. Okay. 23 A. -- will be an issue. 24 Q. And then it says: This is a competitive 25 advantage since they may have lower cost on</p>
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<p>1 have I seen a specific document? 2 BY MR. ARANOFF: 3 Q. Let me try it a different way. I'm 4 asking you whether it was commonplace for 5 documents like the one that I have put in 6 front of you, which is Bebee 12, if you've 7 ever seen these kind of documents before or if 8 this was rare to receive something like this? 9 MR. GREENE: Objection, vague. 10 THE WITNESS: I've seen minutes to 11 meetings. 12 BY MR. ARANOFF: 13 Q. Okay. And then you see where it says 14 reasons for motions, right? 15 A. Yes. 16 Q. Okay. And would you agree with me that 17 when it's talking about reasons for motions, 18 it's talking about the two motions above that 19 I just read into the record? 20 A. It would lead you to believe that, yes. 21 Q. Okay. And it says: Reasons for motions. 22 One, effort to gain 100 percent participation. 23 Do you see that? 24 A. Yes. 25 Q. And am I correct when I say that this</p>	<p>1 their own production. 2 Do you have an understanding as you sit 3 here today as to why there is a competitive 4 advantage? 5 MR. GREENE: Again, objection, lack 6 of foundation. 7 THE WITNESS: I have an idea. 8 BY MR. ARANOFF: 9 Q. And what's your idea? 10 A. Well, there is a cost to the program. 11 Q. Okay. 12 A. So if there were eggs that were sold as 13 being certified that were not, did not come 14 from birds that were on the program, it could 15 be an advantage. 16 Q. Okay. And then you see number 4. It 17 says: Sunny Fresh and Michaels are gaining a 18 competitive advantage in the egg product 19 market versus certified egg processors due to 20 cost structure. 21 Do you see that? 22 A. I see that. 23 Q. Do you have an understanding as to who 24 Sunny Fresh is? 25 A. Yes.</p>

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<p>1 Q. And who is that?</p> <p>2 A. Cargill.</p> <p>3 Q. And is it correct that when you say</p> <p>4 Cargill you are talking about Cargill Kitchen</p> <p>5 Solutions?</p> <p>6 A. I believe that is correct, yes.</p> <p>7 Q. And Michaels as referenced in item 4, do</p> <p>8 you have an understanding that that's Michael</p> <p>9 Foods?</p> <p>10 MR. GREENE: Again, objection, lack</p> <p>11 of foundation.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. You can answer that.</p> <p>14 A. I believe that's who was being spoken</p> <p>15 about here.</p> <p>16 Q. Okay. And then it says, continuing on:</p> <p>17 Both SF... Would you agree that SF is Sunny</p> <p>18 Fresh?</p> <p>19 A. It would lead you to believe that that is</p> <p>20 the case.</p> <p>21 Q. "...and MFI..." Would you believe that</p> <p>22 that's Michael Foods?</p> <p>23 A. I believe that's -- would be correct.</p> <p>24 Q. "...have a major supply networks which</p> <p>25 are non-certified but are on long-term</p>	<p>1 Q. Now, if you look at the second to the</p> <p>2 last page of the document that I handed you,</p> <p>3 there is a motion in the middle of the page,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And it says, quote -- it's -- all of what</p> <p>7 I am about to read is in bold, the entire</p> <p>8 quote. And it says, quote: In order to</p> <p>9 expand the marketing and use of animal care</p> <p>10 certified eggs and egg products, UEP will</p> <p>11 offer licenses to non-certified marketers.</p> <p>12 All non-certified marketers must consent to a</p> <p>13 monthly reporting program with third-party</p> <p>14 audits. All licensees must comply with all</p> <p>15 rules pertaining to commingling,</p> <p>16 representation and use of logo to protect the</p> <p>17 integrity of the ACC program. A license can</p> <p>18 be withdrawn from a licensee within 30 days of</p> <p>19 any audit violation if not corrected to the</p> <p>20 satisfaction of the UEP executive board,</p> <p>21 period, close quote, end bold.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Did I read that correctly?</p> <p>25 A. Yes.</p>
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<p>1 grain-based pricing programs."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Now, if you go down to problems</p> <p>7 created/unanswered by motions, see that at the</p> <p>8 bottom of the same page?</p> <p>9 A. Yes.</p> <p>10 Q. Number 1 says: Limits free trade of</p> <p>11 eggs.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. And then if you turn the page and you</p> <p>17 look at number 8 on the top of the page about</p> <p>18 a quarter of the way down -- see where it says</p> <p>19 number 8? "As economic pressures build, may</p> <p>20 force participants to leave the program to</p> <p>21 reduce cost."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. I read that correctly?</p> <p>25 A. Yes.</p>	<p>1 Q. Okay. Do you have an understanding as to</p> <p>2 what -- the motion that I just read, do you</p> <p>3 know what that motion was?</p> <p>4 A. I have an idea.</p> <p>5 Q. Okay. And what's your idea?</p> <p>6 A. It is in regard to allowing companies to</p> <p>7 have non-certified -- the ability to market</p> <p>8 eggs even though they do not have production,</p> <p>9 own production.</p> <p>10 Q. Okay. And is it your understanding that</p> <p>11 this was a proposed motion?</p> <p>12 A. That is what the email portrays.</p> <p>13 Q. Okay. And do you have an understanding</p> <p>14 as to who was the person or company that</p> <p>15 proposed this motion?</p> <p>16 A. No.</p> <p>17 Q. Okay. Now, if you look down after the</p> <p>18 motion on the document that's in front of you,</p> <p>19 you'll see some handwriting, correct?</p> <p>20 A. Yes.</p> <p>21 Q. First, you see it says -- is this your</p> <p>22 handwriting?</p> <p>23 A. It appears to be.</p> <p>24 Q. Okay. And it says: Four, colon, Roger,</p> <p>25 Bob, me, right?</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay. And the -- who is the Roger that's</p> <p>3 referenced here, do you know?</p> <p>4 A. No, I don't because there are more than</p> <p>5 one Roger.</p> <p>6 Q. Well, do you have a recollection as you</p> <p>7 sit here now as to who the Roger is here?</p> <p>8 A. No.</p> <p>9 Q. And you see then it says Bob underneath</p> <p>10 it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Who is Bob?</p> <p>13 A. I'm not sure.</p> <p>14 Q. And then you said "me," right?</p> <p>15 A. It does.</p> <p>16 Q. Is "me" Tim Bebee?</p> <p>17 A. I believe that would be correct.</p> <p>18 Q. Okay. And then it says to the -- and</p> <p>19 I'll read it. You can correct me if I am</p> <p>20 wrong since this is your handwriting. I'm</p> <p>21 going to do my best. "Gene..." I can't read</p> <p>22 the first word. Can you read that for me?</p> <p>23 A. Thinking it's "made."</p> <p>24 Q. "...made the comment that we are selling</p> <p>25 product with an AW stamp."</p>	<p>1 A. It appears so.</p> <p>2 Q. Okay. And then you'll see number 2,</p> <p>3 right? You see number 2?</p> <p>4 A. I see number 2.</p> <p>5 Q. And it says: Tough time... I think the</p> <p>6 word is "challenging," is that right?</p> <p>7 A. That's what it looks like.</p> <p>8 Q. And then that's crossed out. Would you</p> <p>9 agree with that?</p> <p>10 A. Yes.</p> <p>11 Q. And then it says "defending," right?</p> <p>12 A. Yes.</p> <p>13 Q. "...in court if it would ever come to</p> <p>14 that."</p> <p>15 Did I read that correctly?</p> <p>16 A. It appears to say that.</p> <p>17 Q. Okay. Do you have an understanding as to</p> <p>18 what you were referencing in this document</p> <p>19 under number 2? What would you have a tough</p> <p>20 time defending in court if it ever came to</p> <p>21 that?</p> <p>22 A. I could only speculate.</p> <p>23 Q. Well, you wrote it, right? We</p> <p>24 established that, right?</p> <p>25 A. Yep.</p>
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<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have an understanding as to</p> <p>4 why you wrote that?</p> <p>5 A. I would be speculating.</p> <p>6 Q. Well, you wrote it, right?</p> <p>7 A. It does appear.</p> <p>8 Q. Okay. So if you wrote it, why did you</p> <p>9 write that?</p> <p>10 A. Apparently because I thought that Gene</p> <p>11 feels that we were selling product with the</p> <p>12 stamp without the approval.</p> <p>13 Q. And were you, in fact, doing that?</p> <p>14 A. I have no idea. I don't get involved in</p> <p>15 the selling of product.</p> <p>16 Q. Okay. But you acknowledge that that was</p> <p>17 your handwriting and something that you wrote</p> <p>18 at the time, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, if you turn the page, you'll see</p> <p>21 additional handwriting, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And again, to the best of your</p> <p>24 knowledge, the items on the final page of</p> <p>25 Bebee 12 is your handwriting as well, correct?</p>	<p>1 Q. So you wouldn't be speculating because</p> <p>2 you are the person that actually wrote it.</p> <p>3 So --</p> <p>4 A. I don't know --</p> <p>5 MR. GREENE: Object to that.</p> <p>6 That's argumentative and I object to that.</p> <p>7 MR. ARANOFF: Okay.</p> <p>8 BY MR. ARANOFF:</p> <p>9 Q. Could you answer the question to the best</p> <p>10 of your ability, please?</p> <p>11 A. Well, I can answer, I guess, what I</p> <p>12 believe today. I don't know what I was</p> <p>13 thinking at that point in time.</p> <p>14 Q. Okay. What do you believe today? What</p> <p>15 would you have a tough time defending in court</p> <p>16 if it ever would come to that?</p> <p>17 MR. GREENE: Object to the</p> <p>18 characterization of the note.</p> <p>19 MR. ARANOFF: I'm just reading it.</p> <p>20 MR. GREENE: Yeah, you are not</p> <p>21 reading all of it, Ron. You are going to the</p> <p>22 middle of the page on number 2.</p> <p>23 MR. ARANOFF: Okay. That's fine.</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Go ahead.</p>

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<p>1 A. I would say you would have a tough time 2 defending selling product with a stamp on if 3 you didn't have approval to do that. 4 Q. And that's your understanding -- that's 5 your understanding now, but you are not sure 6 if that was your understanding back when you 7 actually wrote the document, correct? 8 A. No, I cannot be sure of what I was 9 writing in 2005. 10 Q. Okay. And then you'll see number 3. It 11 says: Was not made to address AW concern the 12 more things we do. 13 Do you see that? 14 A. I see that. 15 Q. Did I read that correctly? 16 A. It appears that you did. 17 Q. Do you have an understanding as to what 18 you meant at the time you wrote that? 19 A. I have no idea. 20 Q. Do you have an understanding today what 21 that means? 22 A. No, I don't. 23 Q. Okay. Then you'll see number 4. 24 "Restrict who..." Can you read the word after 25 "who"?</p>	<p>1 preparation, I'll instruct the witness not to 2 answer. 3 BY MR. ARANOFF: 4 Q. Well, if you saw it at the direction of 5 Mr. Greene, that may be -- may be an 6 appropriate objection. If you saw it 7 independently, then that wouldn't be an 8 appropriate objection. 9 MR. GREENE: If you want to phrase 10 the question to exclude what you think is the 11 appropriate objection, it may end up getting 12 through the problem. 13 BY MR. ARANOFF: 14 Q. Let me ask you a question. Since the 15 time that you have written this document until 16 today, have you seen this document? 17 A. No. 18 Q. Have you -- so you have not seen this in 19 preparation for your testimony today other 20 than potentially with Mr. Greene? 21 A. No. 22 MR. ARANOFF: One moment, please. 23 BY MR. ARANOFF: 24 Q. Going back to number 2 in the document 25 where it says: Tough time challenging, which</p>
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<p>1 A. I'm not sure what that word is. 2 Q. Okay. Restrict who, ineligible word, can 3 sell product... Can you read the word after 4 that? 5 A. I think it's supposed to be to with one 6 O. 7 Q. Okay. To. Then it seems to say "creates 8 barrier," right? 9 A. It appears to say that. 10 Q. Okay. Dash, never be done before, dash, 11 beyond. 12 Do you see that? 13 A. I see that. 14 Q. Okay. And do you have an understanding 15 of what you meant when you wrote this? 16 A. No. 17 Q. Do you have an understanding today what 18 that means? 19 A. No. 20 Q. Did you -- when's the last time you saw 21 the handwritten portions of this document? 22 Did you see these in preparation for your 23 deposition today? 24 MR. GREENE: Objection. I'm -- as 25 to that question and what he saw in</p>	<p>1 is crossed out, defending in court if it would 2 ever come to that, is it possible that that 3 meant that there would be a difficult time 4 defending the 100 percent rule? 5 MR. GREENE: Objection -- 6 BY MR. ARANOFF: 7 Q. Is that possible? 8 MR. GREENE: Sorry. Objection, 9 calls for speculation. 10 THE WITNESS: I don't believe so 11 reading it now, no. 12 BY MR. ARANOFF: 13 Q. But is it possible that that's what you 14 meant then? 15 MR. GREENE: Same objection. 16 THE WITNESS: I don't believe it's 17 related to the 100 percent rule. 18 BY MR. ARANOFF: 19 Q. Why do you say that -- withdrawn. 20 What indication do you have that leads 21 you to that belief? 22 A. There's nothing in there that leads me to 23 believe it has anything to do with the 24 100 percent rule. 25 Q. Well, let's turn then for a moment, if</p>

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<p>1 you wouldn't mind, back to the second page of</p> <p>2 the document. And under Reasons For Motions</p> <p>3 on the second page of the document, number 1</p> <p>4 says: Effort to gain 100 percent</p> <p>5 participation.</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. I read that correctly?</p> <p>9 A. Yes, you did.</p> <p>10 Q. Okay. So when we then turn to the last</p> <p>11 page of the document, which under number 2</p> <p>12 says: Tough time challenging, which is</p> <p>13 crossed out, defending in court if it would</p> <p>14 ever come to that, is it possible that you</p> <p>15 were referencing the effort to gain</p> <p>16 100 percent participation?</p> <p>17 MR. GREENE: Objection, calls for</p> <p>18 speculation.</p> <p>19 BY MR. ARANOFF:</p> <p>20 Q. Is it possible?</p> <p>21 A. Anything is possible.</p> <p>22 Q. Okay.</p> <p>23 (Exhibit Number 13 marked for</p> <p>24 identification.)</p> <p>25 BY MR. ARANOFF:</p>	<p>1 committee for animal welfare committee</p> <p>2 conference call February 15th, 2006.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And among the listed committee members is</p> <p>6 Tim Bebee. That's you?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And members and staff. And you've</p> <p>9 got Toby Catherman in there.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Now, if you turn to the third page</p> <p>13 of the document, you'll see there is a</p> <p>14 paragraph that begins "Speaking..."?</p> <p>15 A. Yes.</p> <p>16 Q. "Speaking on behalf of Michael Foods,</p> <p>17 Toby Catherman and Tim Bebee expressed the</p> <p>18 view that the license/marketing agreement</p> <p>19 should be approved without any requirement for</p> <p>20 becoming a UEP Certified company."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Why did you believe that to be the case?</p> <p>24 A. Why did I believe it should be approved,</p> <p>25 is that your question?</p>
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<p>1 Q. Okay. The court reporter has put in</p> <p>2 front of you what's been marked Bebee 13 for</p> <p>3 purposes of identification. I'll give you a</p> <p>4 second to take a look at it. This is a cover</p> <p>5 letter from Toby Catherman to Tim Bebee dated</p> <p>6 Friday, February 17th, 2006. The subject is</p> <p>7 Producer Committee for Animal Welfare</p> <p>8 Committee. It's Bates stamped MF10055038</p> <p>9 through MF10055040.</p> <p>10 A. (Reviews document.)</p> <p>11 Q. Have you had a chance to look at it?</p> <p>12 A. I am looking at it.</p> <p>13 Q. Sorry. I thought you were done.</p> <p>14 A. (Reviews document.) Okay.</p> <p>15 Q. All set? Okay. So again, this is a</p> <p>16 cover email -- the first page of which is a</p> <p>17 cover email from Toby Catherman to you,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And the attachment is Minutes Animal</p> <p>21 Welfare.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, if we turn to the actual</p> <p>25 document, you'll see that this is the producer</p>	<p>1 Q. Yes.</p> <p>2 A. So that we could market certified eggs</p> <p>3 without being a member ourselves for our own</p> <p>4 birds.</p> <p>5 Q. Is it your view -- withdrawn.</p> <p>6 Is there any difference in eggs that are</p> <p>7 non -- in the quality of eggs that are non-UEP</p> <p>8 Certified in comparison with eggs that are UEP</p> <p>9 Certified in your opinion?</p> <p>10 A. In my opinion, no.</p> <p>11 Q. So to be clear, you don't believe that</p> <p>12 there is any benefit to a customer when they</p> <p>13 receive a UEP Certified egg in -- compared to</p> <p>14 somebody who doesn't receive a UEP Certified</p> <p>15 egg, is that correct?</p> <p>16 MR. GREENE: Object to the</p> <p>17 characterization and object argumentative.</p> <p>18 BY MR. ARANOFF:</p> <p>19 Q. Is that correct?</p> <p>20 A. Regarding quality there's no difference.</p> <p>21 (Exhibit Number 14 marked for</p> <p>22 identification.)</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. Mr. Bebee, showing you what's been marked</p> <p>25 Bebee 14 for purposes of identification.</p>

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<p>1 Again, the first page of which is a cover 2 email from Terry Baker to J.D. Clarkson, 3 S. O'Brien, S. Vince, Tim Bebee and 4 Toby Catherman. The subject is Michael Foods 5 Interest Expressed in UEP Certified. This is 6 a multi-page document bearing competing Bates 7 numbers. The first is MFC00018744 and 8 continuing to MFC00018745_00003. It also has 9 the Bates number MFI0033973 and continues to 10 MFI0033976. I'll give you a second to take a 11 look at that and then I'll ask you some 12 questions. 13 A. (Reviews document.) Okay. 14 Q. Okay. First of all, if you look at who 15 received this email, do you know who 16 J.D. Clarkson is? 17 A. Yes, I know who he was. 18 Q. Who was he? 19 A. President of the egg company. 20 Q. Which egg company? 21 A. Michael Foods Egg Products Company. 22 Q. Okay. Is Mr. Clarkson still affiliated 23 with Michael -- 24 A. He's deceased. 25 Q. Sorry to hear that. Okay.</p>	<p>1 Q. -- right? And the first paragraph says: 2 On April 10th I met with Mr. J.D. Clarkson, 3 open paren, president and chief operating 4 office [sic], close paren, Terry Baker and 5 Tim Bebee in the corporate office of Michael 6 Foods in Minnetonka, Minnesota. 7 Do you see that? 8 A. Yes. 9 Q. Okay. Then it says: Following up on the 10 February 15th conference call of the producer 11 committee, I've been working with Terry and 12 Tim on a plan whereby Michael Foods might 13 become a fully, quote, certified, close quote, 14 company on some type of timeline as discussed 15 by members of our committee during discussions 16 on February 15th, correct? 17 A. Yes. 18 Q. Okay. Do you have an understanding as 19 you sit here today as to why at this time 20 Michael Foods was expressing an interest in 21 becoming UEP Certified? 22 A. I can only say it was because we were 23 considering joining the program. 24 Q. Why? Why did you now consider joining 25 the program?</p>
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<p>1 What about Mr. O'Brien? 2 A. He's the general manager of the 3 ingredients division of the company. 4 Q. And when you say "the company," I'm not 5 trying to be difficult, you mean Michael 6 Foods, right? 7 A. Yes. 8 Q. And who is S. Vince -- or maybe it's not 9 S. Vince. Maybe it's S. Vince O'Brien. 10 A. It is. 11 Q. Okay. Sorry. And you're Tim Bebee 12 obviously. And we've spoken about 13 Mr. Catherman. He's also employed by Michael 14 Foods, correct? 15 A. Was. 16 Q. Was. 17 A. He's retired. 18 Q. Okay. All right. So when you turn the 19 page then, you'll see that the -- the document 20 starting on page 2 is titled Michael Foods 21 Interest Expressed in UEP Certified. 22 Do you see that? 23 A. Yes. 24 Q. And it's reported by Gene Gregory -- 25 A. Yes.</p>	<p>1 MR. GREENE: Objection, lack of 2 foundation. 3 BY MR. ARANOFF: 4 Q. You can answer. 5 A. Because it was something that we felt 6 would be proper to do at the time. 7 Q. Well, let me back up a second. 8 There was a time when you made a 9 conscious decision that you were not going to 10 join the UEP Certified program, correct? 11 MR. GREENE: Objection to the 12 characterization. 13 THE WITNESS: I would say we 14 definitely did not rush into it. 15 BY MR. ARANOFF: 16 Q. Okay. But it was more than that, right? 17 A. It was more than... 18 Q. Wasn't that you weren't going to rush 19 into it, you made a -- when I say "you," I'm 20 referring to Michael Foods. Can we agree to 21 that for the moment? 22 A. Sure. 23 Q. Okay. There was a time, was there not, 24 where Michael Foods made a decision that it 25 was not interested in entering the UEP</p>

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<p>1 Certified program, is that correct?</p> <p>2 MR. GREENE: Object to the</p> <p>3 characterization.</p> <p>4 THE WITNESS: I wasn't the</p> <p>5 decision-making person.</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Okay. Who was?</p> <p>8 A. Gregg Ostrander.</p> <p>9 Q. And there was a time, specifically the</p> <p>10 summer of 2006, which is what I think you</p> <p>11 testified to earlier, where Michael Foods did</p> <p>12 enter the UEP Certified program, is that</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. So my question to you is: Do you</p> <p>16 have an understanding as you sit here now as</p> <p>17 to why Michael Foods decided to join the UEP</p> <p>18 Certified program in the summer of 2006?</p> <p>19 MR. GREENE: Objection, lack of</p> <p>20 foundation.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. You'll see that in the middle of the</p> <p>24 document -- withdrawn.</p> <p>25 And the person -- just to be clear, the</p>	<p>1 the way.</p> <p>2 Q. What kind of information did you provide</p> <p>3 to him?</p> <p>4 A. Bird population, expectations.</p> <p>5 Q. At the time, and when I say "at the</p> <p>6 time," I'm referring to the summer of 2006,</p> <p>7 was it your opinion that Michael Foods should</p> <p>8 or should not enter the UEP Certified program?</p> <p>9 MR. GREENE: Objection, lack of</p> <p>10 foundation.</p> <p>11 THE WITNESS: It was my opinion</p> <p>12 that we should join it, yes.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. And did you have a reason as to why</p> <p>15 you -- why that was your opinion?</p> <p>16 A. Yes. It verified doing the right things</p> <p>17 in the chicken houses.</p> <p>18 Q. And when you say "the right things in the</p> <p>19 chicken houses," what does that mean?</p> <p>20 A. Taking care of the birds according to the</p> <p>21 guidelines on the ACC program.</p> <p>22 Q. Was anybody at the UEP applying pressure</p> <p>23 on Michael Foods to join the UEP Certified</p> <p>24 program?</p> <p>25 MR. GREENE: Objection, vague,</p>
207	209
<p>1 person that would be able to answer that</p> <p>2 question, in your view, is Gregg Ostrander,</p> <p>3 correct?</p> <p>4 A. In my opinion, yes.</p> <p>5 Q. Is there anybody else that might be able</p> <p>6 to answer that question other than</p> <p>7 Mr. Ostrander, to the best of your knowledge?</p> <p>8 A. He was the decision-maker.</p> <p>9 Q. In making that kind of decision, would he</p> <p>10 have consulted with anybody else at the</p> <p>11 company?</p> <p>12 MR. GREENE: Objection, calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: You would have to ask</p> <p>15 him that question.</p> <p>16 BY MR. ARANOFF:</p> <p>17 Q. Do you know whether Terry Baker consulted</p> <p>18 with Mr. Ostrander with respect to Michael</p> <p>19 Foods' decision to become UEP Certified?</p> <p>20 A. I don't know.</p> <p>21 Q. But you didn't participate in any</p> <p>22 discussion with Mr. Ostrander with respect to</p> <p>23 Michael Foods' decision to become UEP</p> <p>24 Certified in the summer of 2006?</p> <p>25 A. I gave him supporting information along</p>	<p>1 calls for speculation.</p> <p>2 THE WITNESS: Not that I recall.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Okay. So if you look at the middle of</p> <p>5 the document, it says: The difficulty comes</p> <p>6 in meeting the phase-in schedule for the cage</p> <p>7 space allowance. Michael Foods says that they</p> <p>8 currently have no customers asking for, quote,</p> <p>9 certified, close quote, egg products and they</p> <p>10 don't think the volume will ever be big among</p> <p>11 ingredient buyers and export accounts.</p> <p>12 Do you see that?</p> <p>13 A. I see that.</p> <p>14 Q. I read that correctly?</p> <p>15 A. Yes, you did.</p> <p>16 Q. Okay. And it says: They still believe</p> <p>17 that the program should be customer driven but</p> <p>18 have recognized that they need to be a partner</p> <p>19 with the industry and encourage their</p> <p>20 customers to accept the program and its costs.</p> <p>21 Do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. And this is a report by Gene Gregory?</p> <p>24 A. Yes.</p> <p>25 Q. And do you have any reason to believe</p>

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<p>1 that this does not reflect Michael Foods'</p> <p>2 position at the time?</p> <p>3 MR. GREENE: Objection, lack of</p> <p>4 foundation, calls for speculation.</p> <p>5 THE WITNESS: These are Gene</p> <p>6 Gregory's words. They are not our words.</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. But you understand, and we read this</p> <p>9 before, that these are Gene Gregory's words</p> <p>10 based upon a meeting on April 10th with</p> <p>11 J.D. Clarkson, who at the time was the</p> <p>12 president and chief operating officer of</p> <p>13 Michael Foods, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Terry Baker, who was an employee of</p> <p>16 Michael Foods, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And Tim Bebee, that's you --</p> <p>19 A. That's right.</p> <p>20 Q. -- right? Okay. Okay. And do you have</p> <p>21 an understanding as to what efforts, if any,</p> <p>22 were to be undertaken to encourage their</p> <p>23 customers to accept the program and its costs?</p> <p>24 MR. GREENE: Objection, lack of</p> <p>25 foundation.</p>	<p>1 A. Yes.</p> <p>2 Q. And to the to the best of your knowledge,</p> <p>3 is this based upon the meeting on April 10th</p> <p>4 that Mr. Gregory had with Mr. Clarkson,</p> <p>5 Mr. Baker and with you?</p> <p>6 MR. GREENE: Objection, calls for</p> <p>7 speculation.</p> <p>8 THE WITNESS: To the best of my</p> <p>9 knowledge.</p> <p>10 BY MR. ARANOFF:</p> <p>11 Q. And if you look at number 6 under Pros,</p> <p>12 it says: They understand that guidelines for</p> <p>13 beak trimming, molting, handling and</p> <p>14 transportation have to be met almost</p> <p>15 immediately and are in agreement.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. The same question: Does this accurately</p> <p>19 reflect, to the best of your knowledge, what</p> <p>20 Gene Gregory wrote in accordance with your</p> <p>21 April 10th meeting?</p> <p>22 MR. GREENE: Objection, confusing.</p> <p>23 THE WITNESS: To the best of my</p> <p>24 knowledge.</p> <p>25 BY MR. ARANOFF:</p>
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<p>1 THE WITNESS: No, I did not deal</p> <p>2 with the customers.</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Okay. Now, if you'll look down at the</p> <p>5 bottom of the document, you'll see that</p> <p>6 there's a division of the document called Pro.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And if you'll look at number 2 --</p> <p>10 well, let me back up.</p> <p>11 If you look at number 1, under Pro it</p> <p>12 says: Michael Foods recognizes that they</p> <p>13 would much rather be a part of the industry</p> <p>14 program, open quote, UEP Certified -- I'm</p> <p>15 sorry, open paren, UEP Certified, close paren,</p> <p>16 than create and market their own program.</p> <p>17 Do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And then you see number 2: They</p> <p>22 recognize the policies on backfilling and</p> <p>23 commingling and agree with those policies.</p> <p>24 And again, this is what Gene Gregory</p> <p>25 wrote, right?</p>	<p>1 Q. Yes?</p> <p>2 A. Yes.</p> <p>3 Q. And then it says: Seven, They understand</p> <p>4 that they would be required to file monthly</p> <p>5 compliance reports of eggs purchased and sold.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Does that also accurately reflect what</p> <p>9 Gene Gregory thought based upon your</p> <p>10 April 10th meeting with him?</p> <p>11 MR. GREENE: Objection, calls for</p> <p>12 speculation.</p> <p>13 THE WITNESS: That's what the email</p> <p>14 says.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Okay. And if you'll look at the last</p> <p>17 page of the document, the last paragraph, it</p> <p>18 says: I realize that once again I personally</p> <p>19 have stuck my neck out to be chopped off, but</p> <p>20 I believe it is my obligation to find ways to</p> <p>21 bring as many companies onto the program as</p> <p>22 possible and stop this fight that is going on</p> <p>23 in our industry. We are far better off to be</p> <p>24 united.</p> <p>25 Do you see that?</p>

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<p>1 A. Yes.</p> <p>2 Q. I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What -- do you have an</p> <p>5 understanding as to what Mr. Gregory meant</p> <p>6 when he said "stop this fight"?</p> <p>7 MR. GREENE: Objection, calls for</p> <p>8 speculation.</p> <p>9 THE WITNESS: Disagreement in the</p> <p>10 industry.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. On what?</p> <p>13 A. The program.</p> <p>14 Q. When you say "the program," you mean the</p> <p>15 UEP Certified program?</p> <p>16 A. Yes.</p> <p>17 Q. And do you have an understanding as to</p> <p>18 what was meant by "we are far better off to be</p> <p>19 united"? Do you know what Mr. Gregory meant</p> <p>20 by that?</p> <p>21 MR. GREENE: Again, objection,</p> <p>22 calls for speculation.</p> <p>23 THE WITNESS: Well, looks obvious</p> <p>24 to me.</p> <p>25 BY MR. ARANOFF:</p>	<p>1 apologize if it's repetitive. But one</p> <p>2 question: Do you have an understanding about</p> <p>3 what the term "backfilling" means?</p> <p>4 A. Yes, I do.</p> <p>5 Q. I think you testified to it earlier. I'm</p> <p>6 not sure if you did. But could you just</p> <p>7 briefly describe what is meant by</p> <p>8 "backfilling"?</p> <p>9 A. It means that when there's a loss of a</p> <p>10 bird or birds in cages, you can go back later</p> <p>11 and refill with additional birds to fill the</p> <p>12 cages back up. It typically happens during a</p> <p>13 molt process when -- when the flock is out of</p> <p>14 production and you don't disturb the birds as</p> <p>15 much as when they were out of production. It</p> <p>16 is not typical to do it at any other time. It</p> <p>17 doesn't make sense because you disrupt the</p> <p>18 flock and disrupt the production. So it is</p> <p>19 typically done when a flock is in a molt</p> <p>20 process and out of production.</p> <p>21 Q. Referencing specifically 2007, do you</p> <p>22 have a recollection of whether or not Michael</p> <p>23 Foods engaged in any backfilling?</p> <p>24 A. We were doing some backfilling prior to</p> <p>25 being on the program, yes.</p>
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<p>1 Q. Okay. It's not as obvious to me. So why</p> <p>2 don't you tell me what your thought is.</p> <p>3 A. He's commenting on he thinks the industry</p> <p>4 should be united.</p> <p>5 Q. Okay. And when you say "united," united</p> <p>6 meaning in the UEP Certified program, correct?</p> <p>7 MR. DAVIS: Objection, calls for</p> <p>8 speculation.</p> <p>9 THE WITNESS: I don't know what he</p> <p>10 meant too specifically there.</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. Right. But again -- I mean,</p> <p>13 notwithstanding the objections, this is</p> <p>14 based -- this -- this notes and these -- and</p> <p>15 this report, okay, is based on a meeting that</p> <p>16 Gene Gregory had with you and other people</p> <p>17 from Michael Foods, correct?</p> <p>18 A. That's what it says.</p> <p>19 MR. DAVIS: Objection,</p> <p>20 argumentative and calls for speculation.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. You can answer.</p> <p>23 A. That's what it points out.</p> <p>24 Q. I know you testified about this earlier,</p> <p>25 but I'm not sure if we got an answer. So I</p>	<p>1 Q. Okay. And there came a time when you</p> <p>2 stopped backfilling?</p> <p>3 A. I believe it was when we signed onto the</p> <p>4 program.</p> <p>5 Q. Was that mandated by the UEP</p> <p>6 certification program, that you stopped</p> <p>7 backfilling?</p> <p>8 A. Yes.</p> <p>9 (Exhibit Number 15 marked for</p> <p>10 identification.)</p> <p>11 BY MR. ARANOFF:</p> <p>12 Q. I've put in front of you -- or actually</p> <p>13 the court reporter has, Mr. Bebee, a document</p> <p>14 titled United Egg Producers. It's dated</p> <p>15 July 5th, 2006. It was sent to Terry Baker.</p> <p>16 It is Bates ranged MF10024017 and it continues</p> <p>17 sequentially, I believe, through MF10024026.</p> <p>18 I'll give you a minute to take a look at it</p> <p>19 and I'll ask you a couple of short questions.</p> <p>20 A. (Reviews document.)</p> <p>21 MR. ARANOFF: While you are looking</p> <p>22 at that, can we go off the record for a</p> <p>23 second, please.</p> <p>24 THE VIDEOGRAPHER: Off the record.</p> <p>25 The time is 2:35.</p>

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<p>1 (Recess.)</p> <p>2 THE VIDEOGRAPHER: We are back on</p> <p>3 the record.</p> <p>4 The time is 2:39.</p> <p>5 MR. ARANOFF: Okay. Back on the</p> <p>6 record.</p> <p>7 BY MR. ARANOFF:</p> <p>8 Q. So Mr. Bebee, I've put in front of you</p> <p>9 what's been marked Bebee 15 for purposes of</p> <p>10 identification. Hopefully you've had a chance</p> <p>11 to at least peruse the document and you should</p> <p>12 take whatever time you need. Again, this is a</p> <p>13 UEP document dated July 5th, 2006. I've</p> <p>14 already read the Bates number.</p> <p>15 Do you recognize this document,</p> <p>16 Mr. Bebee?</p> <p>17 A. It appears to be the document that</p> <p>18 acknowledges our signing onto the animal</p> <p>19 certified program.</p> <p>20 Q. Okay. And in particular it assigns to</p> <p>21 Michael Foods the certification number I</p> <p>22 believe it's 345?</p> <p>23 A. I believe that is correct.</p> <p>24 Q. And it assigns you the certified -- it</p> <p>25 says: For the purposes of marketing certified</p>	<p>1 A. Yes.</p> <p>2 Q. Is there anything in here that causes you</p> <p>3 to believe that they are not authentic</p> <p>4 documents?</p> <p>5 A. No.</p> <p>6 Q. Okay. Now, continuing on, on the sixth</p> <p>7 page you'll see that there is an email from</p> <p>8 Gene Gregory to you and Terry Baker, right?</p> <p>9 A. Yes.</p> <p>10 Q. And that's an email from Gene Gregory</p> <p>11 dated August 2nd, 2006?</p> <p>12 A. Yes.</p> <p>13 Q. And it came from your files, Tim Bebee,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. All right. And the cover email from Gene</p> <p>17 Gregory -- the subject actually is Michael</p> <p>18 Foods Space Schedule.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And I believe if you look at the suffix</p> <p>22 of the document, you'll see it says</p> <p>23 MichaelFoodsspaceschedule.xls.</p> <p>24 You see that?</p> <p>25 A. Yes.</p>
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<p>1 eggs, during your transition we have assigned</p> <p>2 you the license agreement number 509.</p> <p>3 Do you see that?</p> <p>4 A. I see that.</p> <p>5 Q. And it says: Your customers may want to</p> <p>6 know your number.</p> <p>7 See that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then that letter is signed by</p> <p>10 Gene Gregory, the senior vice president of the</p> <p>11 UEP, correct?</p> <p>12 A. Yes.</p> <p>13 Q. All right. And then you'll see that the</p> <p>14 next several pages are non-certified license</p> <p>15 agreement for marketing of UEP Certified eggs.</p> <p>16 It's three pages long. And it's signed by --</p> <p>17 purportedly signed by Gene Gregory on behalf</p> <p>18 of the United Egg Producers and Terry Baker on</p> <p>19 behalf of Michael Foods.</p> <p>20 You see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. You have no reason to believe --</p> <p>23 well, withdrawn.</p> <p>24 Do these documents appear authentic to</p> <p>25 you?</p>	<p>1 Q. Are you a computer guy, Mr. Bebee? Do</p> <p>2 you know a little bit about computers?</p> <p>3 A. A little bit.</p> <p>4 Q. And so do you know what the xls suffix</p> <p>5 stands for?</p> <p>6 A. It's an Excel spreadsheet.</p> <p>7 Q. Correct. It is. Okay. And it has an</p> <p>8 attachment on it. And it says Michael Foods</p> <p>9 Space Schedule.</p> <p>10 You see that?</p> <p>11 A. Yes.</p> <p>12 Q. All right. Then there's -- the email</p> <p>13 says: Tim and Terry, Based upon the schedule</p> <p>14 provided by Tim, we have created the attached</p> <p>15 spreadsheet. Please check it carefully to</p> <p>16 make sure I have not made any mistakes.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if you will look at the next three</p> <p>20 pages of the document, it says Michael Foods</p> <p>21 Egg Products - UEP Certified Schedule, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And just so that the record is</p> <p>24 clear, the full schedule is a Bates stamp</p> <p>25 MF10024023 to MF10024025.</p>

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<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Does this accurately reflect the Michael</p> <p>4 Foods Egg Products UEP Certified Schedule to</p> <p>5 the best of your knowledge?</p> <p>6 A. To the best of my knowledge, yes.</p> <p>7 Q. Is there anything in here that causes you</p> <p>8 to believe that this document is not</p> <p>9 authentic?</p> <p>10 A. No.</p> <p>11 (Exhibit Number 16 marked for</p> <p>12 identification.)</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Mr. Bebee, showing you what's been marked</p> <p>15 UEP -- sorry, showing you what's been marked</p> <p>16 Bebee 16 for purposes of identification. It's</p> <p>17 a two-page document bearing the Bates number</p> <p>18 MF10621980 through MF10621981. I'll give you</p> <p>19 a second to take a look at it and ask you some</p> <p>20 what I hope will be simple questions.</p> <p>21 A. (Reviews document.) Okay. I'm ready.</p> <p>22 Q. Do you recognize this document?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And is it correct that this is the</p> <p>25 UEP Certified certification for Michael Foods</p>	<p>1 logo on the company's egg packaging and</p> <p>2 authorizes the use of the logo upon egg</p> <p>3 packaging of their retail and food service</p> <p>4 accounts when requested.</p> <p>5 I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. "This certificate may also be used to</p> <p>8 identify eggs traded within the industry as</p> <p>9 having been produced by an UEP Certified</p> <p>10 company."</p> <p>11 I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. "The certification number 345 has been</p> <p>14 assigned to the company."</p> <p>15 You see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. It's signed by Gene Gregory for</p> <p>18 the United Egg Producers?</p> <p>19 A. Yes.</p> <p>20 Q. It's dated June 10th, 2008, is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. It bears the seal of the UEP -- of "UEP</p> <p>24 Certified" and "United Egg Producers</p> <p>25 Certified" in the lower right and lower</p>
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<p>1 Egg Products Company?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it says: The above-named</p> <p>4 company has successfully passed an animal</p> <p>5 welfare audit conducted by USDA during the</p> <p>6 calendar year 2008, right?</p> <p>7 A. Yes.</p> <p>8 Q. And it says: Having passed the audit</p> <p>9 confirms that the company has met the</p> <p>10 requirements established by UEP in order to be</p> <p>11 recognized as a UEP Certified company and has</p> <p>12 implemented UEP's guidelines endorsed by FMI</p> <p>13 and NCCR.</p> <p>14 You see that?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what FMI is?</p> <p>17 A. Food Marketing Institute, I believe.</p> <p>18 Q. Okay. And do you know what NCCR is?</p> <p>19 A. Something to do with national chain</p> <p>20 restaurants.</p> <p>21 Q. Okay.</p> <p>22 A. I don't remember what the second C is.</p> <p>23 Q. All right. And it says: This</p> <p>24 certification authorizes the company to</p> <p>25 include the United Egg Producers certified</p>	<p>1 left-hand corner?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have any reason to believe that</p> <p>4 this document is not authentic?</p> <p>5 A. I have no reason to believe that.</p> <p>6 Q. Okay. And just so that we're clear, it</p> <p>7 came with a cover letter from Gene Gregory to</p> <p>8 Terry Baker dated June 10th, 2008, which is</p> <p>9 the second page of the document, correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 (Exhibit Number 17 marked for</p> <p>13 identification.)</p> <p>14 BY MR. ARANOFF.</p> <p>15 Q. Showing you, Mr. Bebee, what has been</p> <p>16 marked as Bebee 17 for purposes of</p> <p>17 identification. Take a look at it and then</p> <p>18 I'll ask you some questions.</p> <p>19 A. (Reviews document.) I'm ready.</p> <p>20 Q. Okay. Is it fair to say that this</p> <p>21 document, Bebee 17, at least the first page of</p> <p>22 which is the same as Bebee 16 except for the</p> <p>23 change from 2008 to 2009?</p> <p>24 A. Yes.</p> <p>25 Q. And would you agree with me -- well,</p>

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<p>1 withdrawn.</p> <p>2 Is there anything on this document that</p> <p>3 would lead you to believe it's anything but</p> <p>4 authentic?</p> <p>5 A. No.</p> <p>6 Q. So just to be clear, you believe this to</p> <p>7 be an authentic document?</p> <p>8 A. Yes.</p> <p>9 MR. ARANOFF: Next.</p> <p>10 (Exhibit Number 18 marked for</p> <p>11 identification.)</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Mr. Bebee, showing you what's been marked</p> <p>14 Bebee 18 for purposes of identification.</p> <p>15 Do you see that?</p> <p>16 A. (Reviews document.) Yes.</p> <p>17 Q. This is the same document, would you</p> <p>18 agree, as Bebee 16 and Bebee 17 except that</p> <p>19 the date supplied is 2010 -- except that it's</p> <p>20 been changed to 2010.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Any other changes that you can see on the</p> <p>24 document between Bebee 16, 17 and 18 other</p> <p>25 than date?</p>	<p>1 been marked as Bebee 19 for purposes of</p> <p>2 identification. This has a cover email from</p> <p>3 Garth Sparboe to you. It has an attachment</p> <p>4 called Mueller_doc. And then it has a</p> <p>5 document -- a memorandum attached to it. The</p> <p>6 Bates number of the document is -- it has</p> <p>7 competing Bates numbers, MFC00164386 through</p> <p>8 MFC00164387_00003. It also has Bates number</p> <p>9 MF10052347 through MF10052350. Give you a</p> <p>10 second to take a look at it, the document and</p> <p>11 then I'll ask you a few questions.</p> <p>12 A. (Reviews document.) Okay.</p> <p>13 Q. All set?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. This is a memorandum to Al Pope,</p> <p>16 president, Gene Gregory, senior vice</p> <p>17 president, and the board of directors of</p> <p>18 United Egg Producers.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And it's from the undersigned.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have -- and it's dated</p> <p>25 January 11th, 2003.</p>
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<p>1 A. Other than it's addressed to me versus</p> <p>2 Terry Baker.</p> <p>3 Q. Fair enough. Other than that?</p> <p>4 A. No.</p> <p>5 Q. Okay. Is there any reason -- withdrawn.</p> <p>6 Do you agree with me that this document</p> <p>7 is authentic?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 MR. GREENE: Do we want to take a</p> <p>11 break?</p> <p>12 MR. ARANOFF: Anytime.</p> <p>13 MR. GREENE: Why don't we take a</p> <p>14 break.</p> <p>15 MR. ARANOFF: Okay.</p> <p>16 THE VIDEOGRAPHER: Off record.</p> <p>17 The time is 2:48.</p> <p>18 (Recess.)</p> <p>19 THE VIDEOGRAPHER: We're back on</p> <p>20 the record.</p> <p>21 The time is 3:02.</p> <p>22 (Exhibit Number 19 marked for</p> <p>23 identification.)</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Mr. Bebee, put in front of you what's</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And the subject is United Egg Producers</p> <p>4 UEP Animal Husbandry Guidelines Request For</p> <p>5 Reconsideration.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. The document that I have handed you is</p> <p>9 unsigned at the end of the last page, would be</p> <p>10 page 4 of the document.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. But it references that the memorandum is</p> <p>14 from the undersigned, do you see that, which</p> <p>15 is on the top of the second page of the</p> <p>16 document?</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have an understanding as to</p> <p>20 whether or not you signed this document or a</p> <p>21 copy of it?</p> <p>22 A. No.</p> <p>23 Q. You don't have an understanding if you</p> <p>24 signed it?</p> <p>25 A. No.</p>

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<p>1 Q. Is it possible you signed it?</p> <p>2 A. I don't believe it's possible, no,</p> <p>3 because I'm not the decision-maker on the</p> <p>4 program.</p> <p>5 Q. Do you know whether anyone from Michael</p> <p>6 Foods signed this document? Just so that the</p> <p>7 record is clear, I don't mean this specific</p> <p>8 document because I will concede that the</p> <p>9 document as proffered is unsigned. My</p> <p>10 question is: Do you know whether anyone</p> <p>11 signed this document on behalf of Michael</p> <p>12 Foods?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you know an individual, Mr. Bebee,</p> <p>15 named Ken Klippen?</p> <p>16 A. Yes.</p> <p>17 Q. Who is Mr. Klippen?</p> <p>18 A. He's a former UEP employee.</p> <p>19 Q. Okay. Do you know where Mr. Klippen is</p> <p>20 employed today?</p> <p>21 A. No, I don't.</p> <p>22 Q. Have you had any contact with</p> <p>23 Mr. Klippen?</p> <p>24 A. He has sent me emails over time.</p> <p>25 Q. Right. When's the last time you received</p>	<p>1 the U.S. House of Representatives?</p> <p>2 A. Yes.</p> <p>3 Q. And/or the United States Senate?</p> <p>4 A. Yes.</p> <p>5 Q. And the bill would be with respect, to</p> <p>6 the best of your knowledge, to cage</p> <p>7 specifications?</p> <p>8 A. Yes.</p> <p>9 Q. Would there be anything else contained in</p> <p>10 that bill, to the best of your knowledge, as</p> <p>11 it relates to this case?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Well, let me ask this question: Would</p> <p>14 the bill, to the best of your knowledge,</p> <p>15 contain any issues pertaining to backfilling?</p> <p>16 A. I don't remember if that was included or</p> <p>17 not.</p> <p>18 Q. Hatch reduction?</p> <p>19 A. I don't believe so. It's just relative</p> <p>20 to housing within layer systems.</p> <p>21 Q. Do you have a copy of this bill anywhere?</p> <p>22 A. I believe I could produce it.</p> <p>23 Q. Do you know whether you've produced it in</p> <p>24 this case?</p> <p>25 A. It's taken place since 2008.</p>
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<p>1 an email from Mr. Klippen?</p> <p>2 A. Couple months ago possibly.</p> <p>3 Q. Okay. And in connection with what?</p> <p>4 A. Status of the egg bill.</p> <p>5 Q. When you say "egg bill," what would you</p> <p>6 be referring to specifically?</p> <p>7 A. The campaign to have a national rule put</p> <p>8 into place for animal housing numbers.</p> <p>9 Q. Okay. And when you say "egg bill," that</p> <p>10 would be a formal bill like a form of</p> <p>11 legislation?</p> <p>12 A. That's what it was being worked towards.</p> <p>13 That was the goal.</p> <p>14 Q. And to what governmental agency would</p> <p>15 that bill have been -- proposed bill have been</p> <p>16 submitted to, to the best of your knowledge?</p> <p>17 A. To what government agency?</p> <p>18 Q. Yeah.</p> <p>19 A. I'm -- I don't believe it was for a</p> <p>20 government agency or to a government agency.</p> <p>21 Q. Let me try to break it down. Was this</p> <p>22 egg bill something that was proposed to be</p> <p>23 submitted to the United States Congress?</p> <p>24 A. Yes.</p> <p>25 Q. So it would be a bill proposed to go to</p>	<p>1 Q. Okay. Who was the person that sponsored</p> <p>2 this bill, do you know?</p> <p>3 A. I don't remember specifically.</p> <p>4 Q. Do you know whether the bill has actually</p> <p>5 been proffered to the U.S. Congress or</p> <p>6 presented to the U.S. Congress?</p> <p>7 MR. GREENE: Objection, vague.</p> <p>8 THE WITNESS: It's been dealt with</p> <p>9 in the Senate Ag Committee.</p> <p>10 BY MR. ARANOFF:</p> <p>11 Q. And do you know the result of the Senate</p> <p>12 Ag Committee's decision on the bill?</p> <p>13 A. To not bring it forward.</p> <p>14 Q. To not bring it forward?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know the date of the bill?</p> <p>17 A. No.</p> <p>18 Q. Do you know the index number or</p> <p>19 indication number on the bill?</p> <p>20 A. No, I don't remember it.</p> <p>21 Q. But you have a copy of it, right?</p> <p>22 A. I could find it.</p> <p>23 Q. Okay. All right. Did Michael Foods ever</p> <p>24 have any relationship with Ken Klippen,</p> <p>25 professional relationship?</p>

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<p>1 A. What do you mean by "professional 2 relationship"?</p> <p>3 Q. Well, did you ever have any discussions 4 with Ken Klippen in a professional manner 5 about anything?</p> <p>6 A. I know that there were some discussions 7 held with him, yes.</p> <p>8 Q. About what?</p> <p>9 A. I was not involved in the discussions.</p> <p>10 Q. You had no business contact with 11 Mr. Klippen?</p> <p>12 A. No, I didn't personally, no.</p> <p>13 Q. Who did at Michael Foods?</p> <p>14 A. I don't know specifically.</p> <p>15 Q. Do you know whether Michael Foods ever 16 retained Mr. Klippen for any services related 17 to the egg industry?</p> <p>18 A. Not for sure.</p> <p>19 Q. Okay.</p> <p>20 (Exhibit Number 20 marked for 21 identification.)</p> <p>22 BY MR. ARANOFF:</p> <p>23 Q. Mr. Bebee, showing you what's been marked 24 Bebee 20 for purposes of identification.</p> <p>25 First page is a cover email from</p>	<p>1 remember specifically what the acronym stands 2 for.</p> <p>3 Q. But it's a division of USDA?</p> <p>4 A. Yes.</p> <p>5 Q. And have you ever seen this proposal 6 before, Mr. Bebee?</p> <p>7 A. Well, the email is stating that I was 8 copied on it.</p> <p>9 Q. Do you have a recollection of having 10 received this?</p> <p>11 A. All I can tell you is an alternative 12 program was being considered.</p> <p>13 Q. Okay. And this was an alternative 14 program, am I correct, to the UEP's certified 15 program?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And is it fair to say from this 18 document that Michael Foods was considering 19 participating in this program?</p> <p>20 MR. GREENE: Objection, lack of 21 foundation.</p> <p>22 THE WITNESS: I don't know if it's 23 fair to say that they were considering it or 24 not.</p> <p>25 BY MR. ARANOFF:</p>
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<p>1 Toby Catherman to Terry Baker and to you dated 2 November 3rd, 2006. The subject is Proposal 3 For Conference Call on Tuesday, November 7th. 4 And then the Bates number of the document is 5 MFI0358967 and it continues on to MFI0358975. 6 Give you a second to take a look at it --</p> <p>7 A. (Reviews document.)</p> <p>8 Q. -- and then I'll ask you some questions.</p> <p>9 A. (Reviews document.)</p> <p>10 Q. All set?</p> <p>11 A. Yep.</p> <p>12 Q. Okay. So if you'll look at the second 13 page of the document, it's titled A Proposal. 14 The select committee on developing an animal 15 welfare program utilizing the framework 16 provided by the USDA/AMS process verified 17 program.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what AMS in the title stands 21 for?</p> <p>22 A. Yes.</p> <p>23 Q. What does that mean?</p> <p>24 A. So it's a division of USDA. Animal -- I 25 don't remember the M. I'm sorry. I don't</p>	<p>1 Q. Okay. Well, let me he ask you this: You 2 see -- let's take a look at the administrative 3 and lobbyist services agreement on page 4. 4 It's not page 4 of the document. It's page 4 5 of the proposal. This page right here 6 (indicating). Doing my best to identify it 7 for you.</p> <p>8 A. Okay.</p> <p>9 Q. Bates number MFI0358971. Do you see that 10 there is some proposal here: The consulting 11 agreement is made this blank day of blank 12 2006, open paren, open quote, effective date, 13 close quote, close paren, by and between the 14 group, which is -- the group is italicized, 15 comprised of egg production and further egg 16 processing facilities listed below and Ken 17 Klippen, Klippen and Associates, open paren, 18 Klippen, close paren, having a principal place 19 of business with an address in Audubon, PA 20 19407.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And if you look at the last page of the 24 document under the group, you see number 10, 25 Michael Foods, Terry Baker, Tim Bebee and</p>

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<p>1 Toby Catherman?</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. So would this be a proposal to, among</p> <p>5 other companies, Michael Foods about joining</p> <p>6 the alternative to the UEP Certified program,</p> <p>7 the Klippen animal welfare program?</p> <p>8 MR. GREENE: Objection, calls for</p> <p>9 speculation.</p> <p>10 THE WITNESS: It appears that</p> <p>11 that's what it is.</p> <p>12 BY MR. ARANOFF:</p> <p>13 Q. Do you know whether or not Michael Foods</p> <p>14 ever signed onto this program?</p> <p>15 A. No, I do not know.</p> <p>16 Q. And you testified before that you did not</p> <p>17 interact directly with Mr. Klippen, is that</p> <p>18 right?</p> <p>19 A. Would that mean speaking to him directly?</p> <p>20 Q. Speaking to him would be one way, yeah.</p> <p>21 You never spoke to Mr. Klippen about this</p> <p>22 program?</p> <p>23 A. I may have been on a conference call.</p> <p>24 I'm not sure.</p> <p>25 Q. Okay. Did you ever meet with him about</p>	<p>1 Q. Okay. And just one other thing. To the</p> <p>2 best of your knowledge, does this represent</p> <p>3 the proposal that Mr. Klippen made to Michael</p> <p>4 Foods, to the best of your knowledge?</p> <p>5 MR. GREENE: Objection, lack of</p> <p>6 foundation.</p> <p>7 THE WITNESS: I have no reason to</p> <p>8 believe otherwise.</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. Okay.</p> <p>11 (Exhibit Number 21 marked for</p> <p>12 identification.)</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Showing you what's been marked as</p> <p>15 Bebee 21 for purposes of identification. It's</p> <p>16 a one-page email with a letter in the body of</p> <p>17 it from Ken Klippen. Bates number is</p> <p>18 MF10358985. It's from -- it's an email dated</p> <p>19 October 31st, 2006 from Ken Klippen to</p> <p>20 Terry Baker, Toby Catherman and yourself. The</p> <p>21 subject is Yesterday's Meeting. And again,</p> <p>22 it's dated October 31st, 2006. I'll give you</p> <p>23 a minute to look at it and then I'll ask you a</p> <p>24 question.</p> <p>25 A. (Reviews document.) Okay.</p>
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<p>1 the program?</p> <p>2 A. No.</p> <p>3 Q. Okay. And just for purposes of orienting</p> <p>4 time, you'll look at the date on the top of</p> <p>5 the proposal is November 2006.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And this is slightly after, is it</p> <p>9 not, when the -- when Michael Foods entered</p> <p>10 the UEP Certified program, is that correct?</p> <p>11 A. A few months after, yes.</p> <p>12 Q. And just so that the record is clear, do</p> <p>13 you have an understanding as you sit here now</p> <p>14 as to why shortly after entering the UEP</p> <p>15 Certified program in the summer of 2006</p> <p>16 Michael Foods was looking at a competing</p> <p>17 program of Ken Klippen?</p> <p>18 MR. GREENE: Objection, lack of</p> <p>19 foundation.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. ARANOFF:</p> <p>22 Q. Okay. Do you know who at Michael Foods</p> <p>23 interacted directly with Ken Klippen?</p> <p>24 A. I know that Terry Baker interacted with</p> <p>25 him.</p>	<p>1 Q. You'll see that this is a -- the body of</p> <p>2 the email is a letter from Ken Klippen to</p> <p>3 Terry, Toby and Tim. Would you agree?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And it's -- and the Terry is</p> <p>6 Terry Baker, right?</p> <p>7 A. That's what the email address says.</p> <p>8 Q. And the Toby is Toby Catherman, right?</p> <p>9 A. Yes.</p> <p>10 Q. And the Tim is Tim Bebee, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And it says: Dear Terry, Toby and Tim,</p> <p>13 Many thanks for taking time out of your</p> <p>14 schedule to attend yesterday's egg industry</p> <p>15 meeting at the Marriott O'Hare Hotel. It was</p> <p>16 a productive meeting many of you said as it</p> <p>17 provided the forum to talk about an</p> <p>18 alternative animal welfare program that would</p> <p>19 not mandate 100 percent of your production to</p> <p>20 be in compliance. A customer-driven program</p> <p>21 is defensible as retailers are looking for</p> <p>22 assurances of a program that meets their</p> <p>23 needs, not a program requiring your production</p> <p>24 to be 100 percent under a solitary set of</p> <p>25 guidelines. After all, you are selling eggs</p>

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<p>1 to your customer, not the animal rights</p> <p>2 organizations who will never be satisfied, nor</p> <p>3 ultimately accept any caged layer production.</p> <p>4 Do you see that?</p> <p>5 A. I see that.</p> <p>6 Q. First, does this refresh your</p> <p>7 recollection of your attending a meeting at</p> <p>8 the Marriott O'Hare Hotel with Mr. Catherman,</p> <p>9 Mr. Baker and Mr. Klippen?</p> <p>10 A. I don't remember ever being in person in</p> <p>11 a meeting.</p> <p>12 Q. You have no reason to doubt the</p> <p>13 authenticity of this, do you?</p> <p>14 A. The only thing would be if he's</p> <p>15 addressing it to all three of us and we were</p> <p>16 not all three there.</p> <p>17 Q. But you have no reason to believe that</p> <p>18 that's the case based upon this, do you?</p> <p>19 MR. GREENE: Objection to the</p> <p>20 characterization.</p> <p>21 THE WITNESS: Other than not</p> <p>22 remembering being there?</p> <p>23 BY MR. ARANOFF:</p> <p>24 Q. Right.</p> <p>25 A. Other than that, no.</p>	<p>1 established, we would question whether it can</p> <p>2 be advertised as an animal welfare program to</p> <p>3 consumers and customers in a truthful way.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Did you -- you received this via email,</p> <p>7 is that correct?</p> <p>8 A. That's what the document states.</p> <p>9 Q. And did you have any recollection of</p> <p>10 having received this?</p> <p>11 A. No.</p> <p>12 Q. And do you agree with the information</p> <p>13 contained in item 2?</p> <p>14 MR. GREENE: Objection, confusing.</p> <p>15 BY MR. ARANOFF:</p> <p>16 Q. Well, I just read you number 2. Do you</p> <p>17 agree with that?</p> <p>18 A. Do I -- is the question do I agree that</p> <p>19 all programs should consider the scientific</p> <p>20 committee's recommendations?</p> <p>21 Q. Yes.</p> <p>22 A. Wouldn't say that it's a requirement, no.</p> <p>23 Q. Okay. So you would disagree with this?</p> <p>24 MR. GREENE: Objection to the</p> <p>25 characterization.</p>
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<p>1 (Exhibit Number 22 marked for</p> <p>2 identification.)</p> <p>3 BY MR. ARANOFF:</p> <p>4 Q. Showing you what's been marked as</p> <p>5 Bebee 22 for purposes of identification. It's</p> <p>6 an email from you to Terry Baker and</p> <p>7 Toby Catherman, Bates numbers MF10008397 to</p> <p>8 MF10008398.</p> <p>9 A. (Reviews document.)</p> <p>10 Q. My primary focus is going to be on</p> <p>11 page 2, Mr. Bebee, item number 2.</p> <p>12 A. (Reviews document.) Okay.</p> <p>13 Q. You'll see that on page 2 of the document</p> <p>14 under number 2 -- well, let me back up.</p> <p>15 The beginning of the paragraph says: On</p> <p>16 December 12th, Mike McLeod, Randy Green and I</p> <p>17 met in Washington, D.C. with USDA</p> <p>18 representatives Craig Morris, Lloyd Day and</p> <p>19 Ken Clayton. We expressed the following</p> <p>20 concerns. Number 2, we stated that any</p> <p>21 program built around animal welfare should be</p> <p>22 based on science. That doesn't mean it has to</p> <p>23 be identical to the UEP Certified program.</p> <p>24 But if it doesn't at least meet the standards</p> <p>25 that our scientific advisory committee have</p>	<p>1 BY MR. ARANOFF:</p> <p>2 Q. Well, let me make it a little easier</p> <p>3 because maybe my question wasn't the greatest</p> <p>4 question in the world.</p> <p>5 Do you agree -- I know you are not the</p> <p>6 "we," but: We stated that any program built</p> <p>7 around animal welfare should be based on</p> <p>8 science.</p> <p>9 Do you believe that an animal welfare</p> <p>10 program should be based on science?</p> <p>11 A. Yes.</p> <p>12 Q. To the best of your knowledge, was Ken</p> <p>13 Klippen's alternative animal welfare program</p> <p>14 based upon science?</p> <p>15 MR. GREENE: Objection, lack of</p> <p>16 foundation.</p> <p>17 THE WITNESS: I would have to go</p> <p>18 back and study it. I can't answer that</p> <p>19 sitting here right now.</p> <p>20 BY MR. ARANOFF:</p> <p>21 Q. Okay. But to the best of your knowledge?</p> <p>22 MR. GREENE: Same objection.</p> <p>23 THE WITNESS: Same answer.</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. I just want to run through a couple of</p>

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<p>1 people, see if you know any of them.</p> <p>2 Do you know who Gerald Muller is?</p> <p>3 A. Yes.</p> <p>4 Q. Who is Gerald Muller?</p> <p>5 A. Wakefield Farms' operations manager.</p> <p>6 Q. Do you know who Dave Morton is?</p> <p>7 A. Yes, currently the VP of live production</p> <p>8 for Michael Foods.</p> <p>9 Q. Who is Jeff Erickson?</p> <p>10 A. He is the operations manager of Michael</p> <p>11 Foods Minnesota, farm operations.</p> <p>12 Q. Okay. Who is Kevin Roberson?</p> <p>13 A. Nutritionist for Michael Foods.</p> <p>14 Q. And who is Lauren Keske [sic]?</p> <p>15 A. I don't know Lauren Keske.</p> <p>16 Q. Sorry, I read that wrong. Who is Korin</p> <p>17 Leske?</p> <p>18 A. He is a nutritionist and animal welfare</p> <p>19 coordinator for Michael Foods.</p> <p>20 Q. And who is Mark Waltz?</p> <p>21 A. A former manager at the Gaylord Farm.</p> <p>22 (Exhibit Number 23 marked for</p> <p>23 identification.)</p> <p>24 BY MR. ARANOFF:</p> <p>25 Q. Mr. Bebee, do you have a recollection of</p>	<p>1 A. I don't know. But the email portrays</p> <p>2 that I saw it and sent it on in September of</p> <p>3 2008.</p> <p>4 Q. Did you see this -- aside from something</p> <p>5 that may have been shown to you by counsel,</p> <p>6 did you review this document in preparation</p> <p>7 for your deposition today?</p> <p>8 A. No.</p> <p>9 Q. Okay. So you've read this. Is it fair</p> <p>10 to say that you saw this at least as of</p> <p>11 September 24th, 2008?</p> <p>12 A. That's what the email portrays.</p> <p>13 Q. Okay. And you sent this document to the</p> <p>14 people on the To list of the email, is that</p> <p>15 correct?</p> <p>16 A. That's what the email portrays.</p> <p>17 Q. Okay. And it -- and you wrote -- or</p> <p>18 typed, I should say: This is why I am very</p> <p>19 sensitive on comparing, open paren, actual</p> <p>20 discussions, close paren, with competitors at</p> <p>21 this time.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Why did you send this to the</p> <p>25 people on this email?</p>
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<p>1 having read a Wall Street Journal article</p> <p>2 dated approximately September 23rd, 2008</p> <p>3 titled Federal Prosecutors Probe Food Price</p> <p>4 Collusion? Do you have a recollection of</p> <p>5 that?</p> <p>6 A. No, I did not read the article.</p> <p>7 Q. Showing you what's been marked as</p> <p>8 Bebee 23 for purposes of identification. This</p> <p>9 is a multi-page document bearing Bates number</p> <p>10 MF10321384 through MF10321389. The first page</p> <p>11 is a cover email from Tim Bebee to Gerald</p> <p>12 Muller, Dave Morton, Jeff Erickson, Kevin</p> <p>13 Roberson, Korin Leske and Mark Waltz from</p> <p>14 Tim Bebee. It's dated September 24th, 2008.</p> <p>15 The subject is Antitrust. And it contains an</p> <p>16 attachment that says:</p> <p>17 Federalprosecutorsprobefoodpricecollusion-wsj.</p> <p>18 com.pdf. I'll give you a minute to take a</p> <p>19 look at the document and then I'll ask you</p> <p>20 some questions.</p> <p>21 A. (Reviews document.) Okay.</p> <p>22 Q. All set?</p> <p>23 A. Yep.</p> <p>24 Q. Okay. When is the last time you saw this</p> <p>25 document?</p>	<p>1 MR. GREENE: I'm just going to --</p> <p>2 I'm going to allow the witness to answer. But</p> <p>3 I'm going to caution that because we're</p> <p>4 dealing with legal matters, that if there are</p> <p>5 any discussions with counsel that are</p> <p>6 somewhere in the picture here, you shouldn't</p> <p>7 disclose those. And if you need to talk to me</p> <p>8 about such discussions, we can take a break.</p> <p>9 But subject to that, you can go ahead and</p> <p>10 answer the question.</p> <p>11 BY MR. KINNEY:</p> <p>12 Q. And the only thing I will add to that is</p> <p>13 if you are not answering the question</p> <p>14 completely or not answering the question at</p> <p>15 all because of your attorney's admonition, I</p> <p>16 would like you to indicate that. In other</p> <p>17 words, if you have an answer that you're not</p> <p>18 answering because of advice of counsel, I'd</p> <p>19 like to know that that's what you're doing.</p> <p>20 Don't just say no.</p> <p>21 A. Would you repeat the question.</p> <p>22 Q. Yeah.</p> <p>23 MR. ARANOFF: Can we have my</p> <p>24 original question back.</p> <p>25 (Whereupon, the court reporter read</p>

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<p>1 back the previous question.)</p> <p>2 THE WITNESS: Because I wanted to</p> <p>3 make them aware of it.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Okay. Were there discussions among</p> <p>6 competitors, Michael Foods or others, that you</p> <p>7 are aware of that were ongoing at this time</p> <p>8 that caused you to send this email?</p> <p>9 A. No.</p> <p>10 Q. How do you know that?</p> <p>11 A. I'm not aware of any.</p> <p>12 Q. So you just saw this -- you just saw this</p> <p>13 article and decided to pass it along with no</p> <p>14 reason whatsoever other than you just thought</p> <p>15 it would be helpful?</p> <p>16 MR. GREENE: Objection to the</p> <p>17 characterization and argumentative.</p> <p>18 THE WITNESS: I don't ever want my</p> <p>19 people to have discussions with competitors.</p> <p>20 BY MR. ARANOFF:</p> <p>21 Q. Okay. Does Michael Foods have a formal</p> <p>22 antitrust policy as part of its corporate</p> <p>23 department or as part of something that's</p> <p>24 circulated to its employees?</p> <p>25 A. I'm not aware of the policy if there is</p>	<p>1 collected in response to any document requests</p> <p>2 in this case?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know -- well, withdrawn.</p> <p>5 At any point in time during the pendency</p> <p>6 of this case were you asked to collect</p> <p>7 documents and turn them over to your counsel?</p> <p>8 A. We -- I presented any documents. Counsel</p> <p>9 determined what documents would -- were</p> <p>10 associated with this case.</p> <p>11 Q. But you did a collection on behalf of</p> <p>12 yourself, correct?</p> <p>13 A. Basically counsel come and look through</p> <p>14 all of my information and made the decision on</p> <p>15 what to include.</p> <p>16 Q. Okay. And when they did that they</p> <p>17 checked your computer?</p> <p>18 A. Yes.</p> <p>19 Q. And that's your office computer?</p> <p>20 A. It was all done corporately, I</p> <p>21 understand.</p> <p>22 Q. Okay. And were hard copy documents</p> <p>23 searched as well?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Do you work from home at all?</p>
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<p>1 one.</p> <p>2 Q. Have you ever received any antitrust</p> <p>3 training from anyone at Michael Foods or from</p> <p>4 any outside entity?</p> <p>5 A. Not to my knowledge.</p> <p>6 Q. Okay. Have you ever signed any</p> <p>7 certification or signed any form with respect</p> <p>8 to antitrust or anticompetitive compliance</p> <p>9 issues at Michael Foods?</p> <p>10 MR. GREENE: Objection. You may</p> <p>11 have misspoke. I'll let -- objection,</p> <p>12 confusing the way the question was phrased.</p> <p>13 BY MR. ARANOFF:</p> <p>14 Q. Have you ever had to sign any document at</p> <p>15 all attesting to your understanding as to not</p> <p>16 engaging in any antitrust or anticompetitive</p> <p>17 conduct as an employee at Michael Foods?</p> <p>18 A. Yes.</p> <p>19 Q. You had to?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. When was that?</p> <p>22 A. I don't remember the date.</p> <p>23 Q. Are those forms in writing?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know whether those forms were</p>	<p>1 A. Rarely, some.</p> <p>2 Q. Okay. Did you ever conduct business on</p> <p>3 your home computer?</p> <p>4 A. No.</p> <p>5 Q. Never?</p> <p>6 A. Nope.</p> <p>7 Q. Okay. Was your home computer ever -- was</p> <p>8 your home computer also searched by corporate</p> <p>9 for responsive documents in this case, to the</p> <p>10 best of your knowledge?</p> <p>11 A. I don't have a home computer.</p> <p>12 Q. No computer at home?</p> <p>13 A. My wife has one, but I don't do any</p> <p>14 business with it.</p> <p>15 Q. Do you use it at all?</p> <p>16 A. Yes, I get on the internet.</p> <p>17 Q. Was that computer searched?</p> <p>18 A. No.</p> <p>19 Q. Is there anyplace else where you might</p> <p>20 have documents that would be relevant or</p> <p>21 responsive to this lawsuit other than what</p> <p>22 we've mentioned so far?</p> <p>23 A. Nothing that wasn't considered and</p> <p>24 reviewed --</p> <p>25 Q. Okay.</p>

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<p>1 A. -- or included.</p> <p>2 Q. To the best of your knowledge, did you --</p> <p>3 now that you are -- withdrawn.</p> <p>4 Now that you are a consultant to Michael</p> <p>5 Foods and not an employee for the last</p> <p>6 18 days, have you taken any documents or files</p> <p>7 from the Michael Foods office to Nebraska?</p> <p>8 A. I office out of Nebraska.</p> <p>9 Q. So you have documents there?</p> <p>10 A. Yeah, that's where my office is. That's</p> <p>11 where all the documents are.</p> <p>12 Q. And to the best of your knowledge, do you</p> <p>13 have a copy of the certification that you</p> <p>14 referenced that you signed about antitrust</p> <p>15 compliance?</p> <p>16 A. I didn't keep a copy, no.</p> <p>17 Q. Did you have to submit that copy to</p> <p>18 anybody after you signed it?</p> <p>19 A. It was done electronically. I don't</p> <p>20 remember. I don't think I actually signed</p> <p>21 anything. It was -- I believe it was</p> <p>22 submitted electronically.</p> <p>23 Q. Does -- to the best of your knowledge,</p> <p>24 did every employee at the company have to sign</p> <p>25 that certification?</p>	<p>1 of sending it to anyone else.</p> <p>2 Q. I just want to make sure we're clear.</p> <p>3 Did you send this to Garth Sparboe?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Do you recall ever having discussed the</p> <p>6 contents of this article with anyone beyond</p> <p>7 just forwarding it with the statement "This is</p> <p>8 why I'm very sensitive on comparing actual</p> <p>9 discussions with competitors at this time"?</p> <p>10 A. Only with counsel.</p> <p>11 Q. Okay. Besides -- I don't want to know</p> <p>12 what you discussed with counsel. Did you</p> <p>13 discuss this with anybody else at the company</p> <p>14 other than -- orally after you had sent this</p> <p>15 (indicating)?</p> <p>16 A. Not that I recall.</p> <p>17 Q. You never discussed this with Terry</p> <p>18 Baker?</p> <p>19 A. I don't recall it.</p> <p>20 Q. Okay. And Toby Catherman?</p> <p>21 A. I don't recall it.</p> <p>22 Q. Did any -- to the best of your knowledge,</p> <p>23 did any of the people on this email,</p> <p>24 Mr. Muller, Mr. Morton, Mr. Erickson</p> <p>25 Mr. Roberson, Mr. Leske or Mr. Waltz, send you</p>
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<p>1 MR. GREENE: Objection, lack of</p> <p>2 foundation.</p> <p>3 THE WITNESS: I don't know.</p> <p>4 BY MR. ARANOFF:</p> <p>5 Q. Have you ever been contacted by any</p> <p>6 member of the United States Government with</p> <p>7 respect to antitrust issues at Michael Foods?</p> <p>8 A. No.</p> <p>9 Q. And when I say -- I just want to make the</p> <p>10 record clear. Anybody from the Department of</p> <p>11 Justice?</p> <p>12 A. No.</p> <p>13 Q. And nobody from the Department of Justice</p> <p>14 contacted you with respect to any antitrust</p> <p>15 issues in the egg industry?</p> <p>16 A. No.</p> <p>17 Q. Aside from the people that are listed on</p> <p>18 this email, do you have any recollection of</p> <p>19 having sent this article? And again, the</p> <p>20 article we're talking about is Federal</p> <p>21 Prosecutors Probe Food Price Collusion. Do</p> <p>22 you have a recollection of having sent that to</p> <p>23 anyone else?</p> <p>24 A. No, I didn't have recollection of even</p> <p>25 sending this. I don't have any recollection</p>	<p>1 a response to your email, to the best of your</p> <p>2 knowledge, after having sent this to them?</p> <p>3 A. I don't remember any responses.</p> <p>4 (Exhibit Number 24 marked for</p> <p>5 identification.)</p> <p>6 BY MR. ARANOFF:</p> <p>7 Q. Show you what's been marked as Bebee 24.</p> <p>8 Again, just to try to save some time, what</p> <p>9 really I want to do with this document,</p> <p>10 Mr. Bebee, is just have you look at the main</p> <p>11 document, which is Timeline of Key Animal</p> <p>12 Welfare Motions, I'll read the Bates number in</p> <p>13 a second, and just see if you can tell me</p> <p>14 whether this document appears to be authentic</p> <p>15 to you. So this document that I have handed</p> <p>16 you, which is Bebee 24, has a cover email from</p> <p>17 Gene Gregory to a whole host of people, one of</p> <p>18 which, I think, is you, yeah, one of which is</p> <p>19 Tim Bebee, okay, with a cc to Al Pope and Chad</p> <p>20 Gregory. The subject is the Timeline of Key</p> <p>21 Animal Welfare Motions. Okay. It bears Bates</p> <p>22 number MFI0002839 to MFI002845 [sic]. And</p> <p>23 you'll see that the second page is Timeline of</p> <p>24 Key Animal Welfare Motions.</p> <p>25 Do you recognize this document,</p>

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<p>1 Mr. Bebee?</p> <p>2 A. (Reviews document.) I don't remember it.</p> <p>3 Q. Okay. Do you have any reason to believe</p> <p>4 that this document is anything but authentic?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 (Exhibit Number 25 marked for</p> <p>8 identification.)</p> <p>9 BY MR. ARANOFF:</p> <p>10 Q. I'm showing you what's been marked as</p> <p>11 Bebee 25 now for purposes of identification.</p> <p>12 It is a document titled United Egg Producers</p> <p>13 Animal Husbandry Guidelines for U.S. Egg</p> <p>14 Laying Flocks, 2008 Edition, Copyright 2003,</p> <p>15 United Egg Producers, All Rights Reserved. It</p> <p>16 is a multi-page document bearing MF10017604</p> <p>17 through MF10017636.</p> <p>18 Again, Mr. Bebee, I'm going to have you</p> <p>19 take a look at this. And really the only</p> <p>20 thing I want to know is whether you have any</p> <p>21 reason to believe that this is anything but</p> <p>22 authentic.</p> <p>23 A. (Reviews document.) I have no reason to</p> <p>24 believe it is anything but authentic.</p> <p>25 Q. And to the best of your knowledge</p>	<p>1 Do you see that, sir?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And right above that is reference</p> <p>4 to a Michael Foods executive. Do you know who</p> <p>5 that executive was?</p> <p>6 A. No, I don't.</p> <p>7 Q. Were you asked by anyone to make any</p> <p>8 comments concerning the substance of this --</p> <p>9 of the article that was marked as Exhibit 23?</p> <p>10 A. No.</p> <p>11 Q. Okay. And on that same page there's a</p> <p>12 reference to SK Foods Incorporated of Lemoore,</p> <p>13 California.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever met or had a conversation</p> <p>17 with anybody affiliated with SK Foods?</p> <p>18 A. No, I haven't.</p> <p>19 Q. Are you acquainted with a gentleman who's</p> <p>20 name is Scott Salyer, S-a-l-y-e-r?</p> <p>21 A. No.</p> <p>22 Q. Who is Diane Sparish, S-p-a-r-i-s-h, if</p> <p>23 you know?</p> <p>24 A. She's an employee of Michael Foods.</p> <p>25 Q. How long has she been employed by Michael</p>
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<p>1 generally, do you believe that Michael Foods</p> <p>2 is in compliance with this document?</p> <p>3 A. Yes.</p> <p>4 MR. ARANOFF: We can go off the</p> <p>5 record at this point.</p> <p>6 THE VIDEOGRAPHER: Off record.</p> <p>7 The time is 3:49.</p> <p>8 (Off the record.)</p> <p>9 THE VIDEOGRAPHER: This is the</p> <p>10 beginning of disk four in the deposition of</p> <p>11 Timothy Bebee.</p> <p>12 We are back on the record at 4:00.</p> <p>13</p> <p>14 EXAMINATION</p> <p>15</p> <p>16 BY MR. RAYLE:</p> <p>17 Q. Good afternoon, Mr. Beebe. My name is</p> <p>18 Merrick Rayle. I'm one of the lawyers</p> <p>19 representing the indirect purchaser plaintiffs</p> <p>20 in this case.</p> <p>21 A. Okay.</p> <p>22 Q. Let me redraw your attention to</p> <p>23 Exhibit 23, if I could. Specifically on</p> <p>24 page 2 of that document, and that's 10321386,</p> <p>25 there is a heading, Series of Exports.</p>	<p>1 Foods?</p> <p>2 A. I do not know that.</p> <p>3 Q. Is she an officer currently?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Was she ever a vice president, general</p> <p>6 manager?</p> <p>7 A. I don't remember if she held that</p> <p>8 position or not. That's possible.</p> <p>9 Q. Okay. Would you pull Bebee S, please.</p> <p>10 A. Is there a number?</p> <p>11 Q. It's just Bebee S.</p> <p>12 A. Sorry. Okay.</p> <p>13 Q. Do you have that in front of you?</p> <p>14 A. Yes.</p> <p>15 MR. GREENE: Give me just a moment.</p> <p>16 I'm having trouble finding mine. You can go</p> <p>17 ahead.</p> <p>18 MR. RAYLE: Okay.</p> <p>19 BY MR. RAYLE:</p> <p>20 Q. Does your handwriting appear on that</p> <p>21 document, sir?</p> <p>22 A. No, I do not see my handwriting on this.</p> <p>23 Q. Does your signature appear on the</p> <p>24 document?</p> <p>25 A. No.</p>

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<p>1 Q. Who signed this particular document?</p> <p>2 A. It appears to be Terry Baker.</p> <p>3 Q. Okay. And there's no date on the</p> <p>4 document, correct?</p> <p>5 A. That is correct.</p> <p>6 Q. Do you have any idea about when the</p> <p>7 document would have been prepared?</p> <p>8 A. No --</p> <p>9 MR. GREENE: Objection, lack of</p> <p>10 foundation.</p> <p>11 MR. RAYLE: Move to strike.</p> <p>12 THE WITNESS: No, I do not.</p> <p>13 BY MR. RAYLE:</p> <p>14 Q. Now, you testified this morning that you</p> <p>15 devoted 20 hours to preparing for this</p> <p>16 deposition.</p> <p>17 Do you recall that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. During any part of that 20-hour</p> <p>20 preparation did you meet with persons who were</p> <p>21 not lawyers?</p> <p>22 A. No.</p> <p>23 Q. So was there a lawyer present during</p> <p>24 every one of those 20 hours preparing for the</p> <p>25 deposition?</p>	<p>1 A. Yes, I did.</p> <p>2 Q. And those duties, those projects may</p> <p>3 expand as we go forward?</p> <p>4 A. It's possible.</p> <p>5 Q. Does the consultancy agreement have any</p> <p>6 term, or time limits set, any dates?</p> <p>7 A. It's through May of 2014 at this point.</p> <p>8 Q. Now, have you ever heard the phrase</p> <p>9 "information known or reasonably available" to</p> <p>10 a -- in the context of a deposition?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Not a phrase that you've heard before?</p> <p>13 A. Not that I remember.</p> <p>14 Q. Okay. Now, I believe you testified this</p> <p>15 morning -- although I don't know the record is</p> <p>16 entirely clear, but you've been designated as</p> <p>17 the corporate representative for Michael Foods</p> <p>18 in connection with the topics listed in</p> <p>19 Exhibit W, is that correct?</p> <p>20 A. (Reviews document.)</p> <p>21 Q. On page 2 of Exhibit W you'll see a</p> <p>22 reference to topic 1, topic 8, et cetera?</p> <p>23 A. Yes.</p> <p>24 Q. Now, drawing your attention to topic 13,</p> <p>25 can you tell us, please, what you did, if</p>
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<p>1 A. Yes.</p> <p>2 Q. Okay. You also testified that you</p> <p>3 currently are a consultant, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Have you entered into any written</p> <p>6 consultancy agreements with Michael Foods?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And what are the nature of</p> <p>9 your responsibilities as a -- or duties as a</p> <p>10 consultant?</p> <p>11 A. To work on special projects.</p> <p>12 Q. Is this litigation considered a special</p> <p>13 project, to your knowledge?</p> <p>14 A. No.</p> <p>15 Q. What kind of special projects are you</p> <p>16 assigned to currently?</p> <p>17 A. As I mentioned earlier, it's the change</p> <p>18 of a feed supply on one of our contract</p> <p>19 situations or contract farms, the pullet</p> <p>20 supply, cage-free pullet supply --</p> <p>21 Q. Okay. That's good. I don't want you to</p> <p>22 have to repeat what you said this morning.</p> <p>23 You named everything this morning that is</p> <p>24 currently on your plate as a consultant, is</p> <p>25 that correct?</p>	<p>1 anything, to prepare to give testimony in</p> <p>2 connection with that topic as the corporate</p> <p>3 representative of Michael Foods?</p> <p>4 A. I have done nothing other than actually</p> <p>5 seeing to it that the guidelines were followed</p> <p>6 over the past several years.</p> <p>7 Q. All right. With respect to topic 15,</p> <p>8 contacts with UEP SCIENTIFIC ADVISORY</p> <p>9 committee, what specifically, if anything, did</p> <p>10 you do to prepare yourself to give testimony</p> <p>11 as the corporate representative of Michael</p> <p>12 Foods on that topic?</p> <p>13 MR. GREENE: Objection, incomplete</p> <p>14 description of topic 15 which has a footnote.</p> <p>15 BY MR. RAYLE:</p> <p>16 Q. Same question.</p> <p>17 A. I have done nothing to prepare for this</p> <p>18 case regarding contacting any of the</p> <p>19 scientific advisory committee members.</p> <p>20 Q. With respect to topic 19, what, if</p> <p>21 anything, did you do to prepare yourself to</p> <p>22 testify as the corporate representative of</p> <p>23 Michael Foods here today?</p> <p>24 A. We discussed it in our meeting yesterday.</p> <p>25 MR. GREENE: Objection -- well, you</p>

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<p>1 said it. I'm sure Mr. Rayle doesn't want you</p> <p>2 to disclose communications with counsel. So</p> <p>3 in answering your questions I'm going to</p> <p>4 instruct you not to discuss your</p> <p>5 communications with counsel and otherwise you</p> <p>6 can answer his questions.</p> <p>7 BY MR. RAYLE:</p> <p>8 Q. Yeah, let me emphasize. I have zero</p> <p>9 interest in what Mr. Greene thinks about this</p> <p>10 case. I don't need to know what you</p> <p>11 discussed.</p> <p>12 A. Okay. Nothing.</p> <p>13 Q. Now, in being designated the corporate</p> <p>14 representative of Michael Foods for purposes</p> <p>15 of the topics that we've just discussed, what</p> <p>16 is your understanding, if you have one, of</p> <p>17 your -- of your role as the corporate</p> <p>18 representative?</p> <p>19 A. Representative?</p> <p>20 Q. Of Michael Foods?</p> <p>21 A. For what?</p> <p>22 Q. Pursuant to the notice that was served on</p> <p>23 you for your deposition and with respect to</p> <p>24 the matters outlined in the exhibit that you</p> <p>25 have in front of you, those eight topics.</p>	<p>1 Q. All right.</p> <p>2 MR. RAYLE: Let's mark this as the</p> <p>3 exhibit next in order.</p> <p>4 (Exhibit Number 26 marked for</p> <p>5 identification.)</p> <p>6 BY MR. RAYLE:</p> <p>7 Q. Exhibit 26, Mr. Witness, is titled</p> <p>8 Amended Deposition Notice of Tim Bebee, is it</p> <p>9 not?</p> <p>10 A. (Reviews document.) Yes.</p> <p>11 Q. Have you ever seen this document prior to</p> <p>12 today?</p> <p>13 A. I don't believe I have, no.</p> <p>14 MR. RAYLE: Can I have that answer.</p> <p>15 (Whereupon, the court reporter read</p> <p>16 back the previous answer.)</p> <p>17 BY MR. RAYLE:</p> <p>18 Q. It's dated June 28th, 2013, is that</p> <p>19 correct? Front page, first page.</p> <p>20 A. Yes.</p> <p>21 Q. Now, were you told on or about June 28th</p> <p>22 that your deposition was going to be taken,</p> <p>23 had been noticed for today?</p> <p>24 A. I don't know what day I was told. I</p> <p>25 don't recall specifically.</p>
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<p>1 A. I'm the person most aware of these topics</p> <p>2 relative to the internal production of Michael</p> <p>3 Foods.</p> <p>4 Q. All right. And to prepare yourself for</p> <p>5 this deposition, other than meeting with your</p> <p>6 attorneys, you did nothing else in terms of</p> <p>7 talking to other employees, current or former,</p> <p>8 of Michael Foods, is that correct?</p> <p>9 A. That would be correct.</p> <p>10 Q. So you didn't make any effort, if I</p> <p>11 understand your testimony, to, for example,</p> <p>12 taking topic 13, discover all information</p> <p>13 known or reasonably available to Michael Foods</p> <p>14 with respect to that topic, is that correct?</p> <p>15 MR. GREENE: Object to the</p> <p>16 characterization.</p> <p>17 THE WITNESS: We made all the</p> <p>18 information available relative to the topic.</p> <p>19 BY MR. RAYLE:</p> <p>20 Q. Did you speak with any non-attorney in</p> <p>21 connection with that topic to determine what</p> <p>22 other people knew or what other information</p> <p>23 was reasonably available to Michael Foods in</p> <p>24 connection with that topic?</p> <p>25 A. No.</p>	<p>1 Q. At the time you were told that your</p> <p>2 deposition would be taken here today, were you</p> <p>3 also told that you would be asked to act as</p> <p>4 Michael Foods' corporate representative with</p> <p>5 respect to certain topics?</p> <p>6 A. Was I asked that in June --</p> <p>7 Q. Yes.</p> <p>8 A. -- is that your question?</p> <p>9 Q. Yes.</p> <p>10 A. Don't remember that question</p> <p>11 specifically.</p> <p>12 Q. Do you recall if you were so advised</p> <p>13 anytime prior to June 28th of 2013?</p> <p>14 A. To speak to certain topics?</p> <p>15 Q. Yes, to speak as Michael Foods' corporate</p> <p>16 representative.</p> <p>17 A. Other than knowing I was going to be</p> <p>18 deposed and speak on the issue, nothing more</p> <p>19 specific than that.</p> <p>20 Q. So you have no memory of being told that</p> <p>21 in connection with your deposition you would</p> <p>22 be testifying with respect to your own</p> <p>23 personal knowledge and you would also be</p> <p>24 testifying as a corporate representative of</p> <p>25 Michael Foods, is that correct?</p>

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<p>1 MR. GREENE: Object to the</p> <p>2 characterization.</p> <p>3 MR. RAYLE: Move to strike.</p> <p>4 THE WITNESS: So I need to answer?</p> <p>5 MR. GREENE: If you --</p> <p>6 THE WITNESS: I was made aware that</p> <p>7 I would be testifying and being deposed on the</p> <p>8 issues that I was involved in and aware of.</p> <p>9 BY MR. RAYLE:</p> <p>10 Q. And were you advised that you would be</p> <p>11 testifying not only based on your own personal</p> <p>12 knowledge but also with respect to information</p> <p>13 known or reasonably available to Michael Foods</p> <p>14 in connection with those topics?</p> <p>15 MR. GREENE: I'm going to object.</p> <p>16 And you can answer the question,</p> <p>17 but I don't -- in answering I don't want you</p> <p>18 to disclose any communications with counsel.</p> <p>19 THE WITNESS: I'll follow my</p> <p>20 counsel's direction on that and not answer.</p> <p>21 MR. RAYLE: Are you instructing him</p> <p>22 not to answer?</p> <p>23 MR. GREENE: I'm not instructing</p> <p>24 him not to answer. I'm instructing him to be</p> <p>25 cautious that his answer should not include</p>	<p>1 THE WITNESS: Yes, on those topics.</p> <p>2 BY MR. RAYLE:</p> <p>3 Q. Do you recognize the phrase "corporate</p> <p>4 representative"?</p> <p>5 A. Yes.</p> <p>6 Q. And have you been told that you are</p> <p>7 Michael Foods' corporate representative in</p> <p>8 connection with those topics?</p> <p>9 A. Yes.</p> <p>10 (Exhibit Number 27 marked for</p> <p>11 identification.)</p> <p>12 BY MR. RAYLE:</p> <p>13 Q. Exhibit 27, for identification is</p> <p>14 MFN018821 and MF10111951 [sic], a one-page</p> <p>15 document dated April 1, 2002 from Mr. -- copy</p> <p>16 of an email apparently from Mr. Ostrander, to,</p> <p>17 among others, yourself. And then below that</p> <p>18 is an email from you.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. I want to draw your attention to the</p> <p>22 email that bears your name from Tim -- from</p> <p>23 Bebee, Tim J., Wednesday, March 27, 2002, at</p> <p>24 2:19 p.m. to Mr. Goucher and Mr. Ostrander,</p> <p>25 subject UEP Animal Welfare Meeting.</p>
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<p>1 any communications with counsel.</p> <p>2 THE WITNESS: I'm speaking to the</p> <p>3 issues that I am involved with and aware of.</p> <p>4 BY MR. RAYLE:</p> <p>5 Q. In what capacity?</p> <p>6 A. VP of live production at the time.</p> <p>7 Q. And that was -- that was the -- that was</p> <p>8 the position you held when you were employed,</p> <p>9 correct?</p> <p>10 A. I'm still employed. I'm just in a</p> <p>11 different role.</p> <p>12 Q. All right. Your employed as a</p> <p>13 consultant?</p> <p>14 A. Yes.</p> <p>15 Q. But were you at any time told, I'm going</p> <p>16 to ask you one more time, that in addition to</p> <p>17 testifying at a deposition based on your own</p> <p>18 personal knowledge in that position you've</p> <p>19 just described, in addition to that role you</p> <p>20 would also be testifying as the corporate</p> <p>21 representative of Michael Foods in connection</p> <p>22 with the eight topics that are delineated in</p> <p>23 the exhibit that you just looked at?</p> <p>24 MR. GREENE: Objection, asked and</p> <p>25 answered.</p>	<p>1 Do you see that, sir?</p> <p>2 A. Yes.</p> <p>3 Q. Read through that, if you would. I'm</p> <p>4 going to ask you some questions.</p> <p>5 A. (Reviews document.) Okay.</p> <p>6 Q. Now, as of March 27, 2002, at 2:19 p.m.</p> <p>7 what was your position with Michael Foods?</p> <p>8 A. Vice president of live production.</p> <p>9 Q. What was the position of Mr. Bill L.</p> <p>10 Goucher at that time?</p> <p>11 A. President of the egg company.</p> <p>12 Q. What was the position of Mr. Gregg A.</p> <p>13 Ostrander at that time?</p> <p>14 A. CEO of Michael Foods.</p> <p>15 Q. You state in the opening paragraph,</p> <p>16 second sentence: As you might expect, I was</p> <p>17 one of the few bad guys often voting against</p> <p>18 the motions made.</p> <p>19 Do you recall using that language</p> <p>20 referring to yourself as one of the few bad</p> <p>21 guys?</p> <p>22 A. I don't remember the email specifically.</p> <p>23 But it is in print, so it must have taken</p> <p>24 place.</p> <p>25 Q. Well, today can you tell us what the</p>

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<p>1 context of that observation was, what you 2 intended to convey, being one of the few bad 3 guys? 4 A. No. 5 Q. Do you recall any of the other bad guys? 6 A. No. 7 Q. And the next paragraph -- or the next 8 sentence, rather, you say that: Other major 9 producers represented and on the committee 10 were Cal-Maine, Rose Acres, Kofkoff, now part 11 of Land O' Lakes, Buckeye, Midwest Poultry 12 Services, Sparboe and Day Lay. 13 Do you see that? 14 A. Yes. 15 Q. And you say: All but Buckeye have signed 16 onto the program. 17 Did you mean to say that each of those 18 companies that you refer to as major producers 19 other than Buckeye had agreed to sign onto the 20 UEP animal welfare committee -- 21 A. That's what this is portraying, appears 22 to be. 23 Q. -- or program rather. And you refer to 24 the executive board in the last sentence. 25 What is the executive -- what executive board</p>	<p>1 "cheating"? 2 A. More than likely it meant that someone 3 selling eggs that were not certified. 4 Q. Did you believe that was cheating? 5 A. I must have at the time. 6 Q. The next bullet is: Many commented on 7 the issue that they are not receiving pressure 8 from their customers. 9 What does that mean, or what did you 10 intend to convey there, sir, receiving 11 pressure from the customers to do what? 12 A. Well, based on what this says, is that 13 customers were not asking for an animal 14 welfare program. 15 Q. Okay. Then you say: Most all agree that 16 at this point, it is a tool to resurrect -- to 17 resurrect the market problem. 18 Do you see that, sir? 19 A. I see that. 20 Q. What did you mean to convey with that 21 sentence? First of all, what is the "it"? 22 What does "it" mean? What's that refer to? 23 A. Well, I believe that what it meant at the 24 time is the certified program. 25 Q. That would be the animal welfare</p>
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<p>1 are you referring to there, sir? 2 A. It appears to be the executive UEP board. 3 Q. Were you a member of the executive UEP 4 board at that time? 5 A. No. 6 Q. Did Michael Foods have any representative 7 on the UEP executive board at that time? 8 A. We had a member on the board, but 9 not -- not sure what this means by executive 10 board. 11 Q. What was -- who was the member of the 12 board? 13 A. Terry Baker I believe. I believe he was 14 on at this time I'm not even sure of that -- 15 Q. All right. 16 A. -- without checking dates specifically. 17 Q. Under highlights towards the end -- draw 18 your attention to the last three what I'll 19 call bullet points starting with: All are 20 concerned about cheating if the whole industry 21 does not participate. 22 Do you see that? 23 A. Yes. 24 Q. What did you mean by that observation, 25 sir, specifically what did you mean by</p>	<p>1 committee or the animal welfare program or 2 some other program? 3 A. That would be the program. 4 Q. Which -- the animal welfare program? 5 A. ACC program. 6 Q. When you say "to resurrect the market 7 problems," what were you referring to there? 8 A. Not 100 percent sure. But more than 9 likely affect the supply. 10 Q. Supply in what context, sir? 11 A. The number of eggs being produced. 12 Q. Okay. 13 (Exhibit Number 28 marked for 14 identification.) 15 BY MR. RAYLE: 16 Q. Exhibit 28 is a copy of an email from 17 Rich Dutton sent Thursday, November 15, 2001. 18 It's numbered MF10111210 [sic]. Ask you to 19 look through that. 20 A. (Reviews document.) Okay. 21 Q. All right. On this -- I think I misread 22 the number. Let me restate that. It's MFI 23 MF10111210 [sic]. It could be MFI, sorry. 24 MF10111210. 25 As of November 15, 2001, what was</p>

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<p>1 Mr. Dutton's position if you know, sir?</p> <p>2 A. Veterinarian.</p> <p>3 Q. That is a doctor of veterinary medicine?</p> <p>4 A. Yes.</p> <p>5 Q. DVM. Was he employed by Michael Foods at</p> <p>6 that time?</p> <p>7 A. Yes, he was.</p> <p>8 Q. And this email relates to the UEP</p> <p>9 committee for animal welfare, does it not?</p> <p>10 A. That's what it states.</p> <p>11 Q. Okay. Do you recall receiving a copy of</p> <p>12 this -- do you recall receiving this email?</p> <p>13 A. No.</p> <p>14 Q. Now, there's a reference in the third</p> <p>15 paragraph to Mr. Ken Looper. Do you know who</p> <p>16 Mr. Looper was in November 2001?</p> <p>17 A. Yes.</p> <p>18 Q. Who was he?</p> <p>19 A. He was an employee of Cal-Maine Foods.</p> <p>20 Q. There is a reference to Mr. Joe Fortin.</p> <p>21 Who is Mr. Fortin, if you know?</p> <p>22 A. He was an employee of Kofkoff Egg Farms.</p> <p>23 Q. At the very end of -- is it Dr. Dutton?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Call him doctor. End of Dr. Dutton's</p>	<p>1 BY MR. RAYLE:</p> <p>2 Q. Let me draw your attention again to Bebee</p> <p>3 Exhibit K. It's a 10-K filed as of 1996.</p> <p>4 MR. GREENE: What year?</p> <p>5 MR. RAYLE: 1996. Looks like this</p> <p>6 (indicating). He was questioned about it by</p> <p>7 Mr. Aranoff most recently and Mr. Kinney this</p> <p>8 morning.</p> <p>9 BY MR. RAYLE:</p> <p>10 Q. Do you have it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Look at the third page, if you</p> <p>13 would, please.</p> <p>14 A. Third?</p> <p>15 Q. Third page.</p> <p>16 A. Find it.</p> <p>17 Q. The fourth paragraph starting out: Shell</p> <p>18 eggs are essentially a commodity and are sold</p> <p>19 based upon reported egg prices.</p> <p>20 Do you see that language?</p> <p>21 A. Yes.</p> <p>22 Q. What is your understanding of the term</p> <p>23 shell eggs?</p> <p>24 A. Eggs that still have a shell on them</p> <p>25 versus an egg product or liquid egg.</p>
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<p>1 email, there is a sentence says: Actually I</p> <p>2 had the feeling that several of the</p> <p>3 individuals felt this was a way to get out of</p> <p>4 the low egg prices and save them from</p> <p>5 disaster.</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. What did you understand or what do you</p> <p>9 understand Dr. Dutton to be stating and making</p> <p>10 that comment?</p> <p>11 MR. GREENE: Objection, calls for</p> <p>12 speculation.</p> <p>13 BY MR. RAYLE:</p> <p>14 Q. What do you understand? What's your</p> <p>15 understanding, sir?</p> <p>16 MR. GREENE: Same objection.</p> <p>17 MR. RAYLE: Move to strike.</p> <p>18 THE WITNESS: He's stating his</p> <p>19 opinion apparently.</p> <p>20 BY MR. RAYLE:</p> <p>21 Q. And what is that opinion as you</p> <p>22 understand it?</p> <p>23 MR. GREENE: Same objection.</p> <p>24 You can go ahead.</p> <p>25 THE WITNESS: Just what it says.</p>	<p>1 Q. Okay. You can put that aside.</p> <p>2 Now, in connection with the animal</p> <p>3 welfare program, Mr. Bebee, are you aware of</p> <p>4 any studies that were done with respect to the</p> <p>5 effect of the animal welfare program on the</p> <p>6 retail prices of shell eggs?</p> <p>7 A. No.</p> <p>8 Q. Did you from time to time in your</p> <p>9 capacity as an employee of Michael Foods have</p> <p>10 occasion to receive reports concerning retail</p> <p>11 prices of shell eggs?</p> <p>12 A. There might have been figures included in</p> <p>13 the United Voices newsletters. I don't</p> <p>14 remember exactly.</p> <p>15 Q. Were you aware of any studies conducted</p> <p>16 at any time in the context of the animal</p> <p>17 welfare program in connection with the effect</p> <p>18 of that program on the supply of shell eggs</p> <p>19 available on the market?</p> <p>20 A. I don't remember any specifically.</p> <p>21 Q. Do you remember any studies in general?</p> <p>22 A. No.</p> <p>23 Q. Okay. Now, can you tell us -- and I</p> <p>24 apologize if you -- if you answered this</p> <p>25 question earlier. When did -- when did</p>

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<p>1 Michael Foods become a participant in the 2 animal welfare program for the first time? 3 A. In the summer of 2006. 4 Q. Okay. And once Michael Foods entered 5 that program did the supply of shell eggs 6 increase or decrease? 7 MR. GREENE: Objection, vague. 8 THE WITNESS: The supply in the 9 country or -- 10 BY MR. RAYLE: 11 Q. Yes. 12 A. -- what supply are you talking about? 13 Q. The supply in the country, first of all. 14 A. I have no idea. 15 Q. All right. Did Michael Foods 16 participation in the welfare program, was that 17 a factor, to your knowledge, in supplying 18 shell eggs to the market after you entered the 19 program? 20 A. I have no idea. 21 Q. Who would be the best person for me to 22 depose to elicit that information, that's from 23 Michael Foods, that is? 24 MR. GREENE: Objection, confusing. 25 THE WITNESS: I don't know.</p>	<p>1 A. There's three divisions. 2 Q. Okay. Do you remember the three division 3 heads in the summer of 2006, who they were? 4 A. Not sure on the dating. I could tell you 5 who they are today, but I couldn't verify 6 2006. 7 Q. What documents would I have to consult to 8 ascertain that information? 9 A. I don't know specifically what documents; 10 organizational chart. 11 Q. Okay. 12 (Exhibit Number 29 marked for 13 identification.) 14 BY MR. RAYLE: 15 Q. Exhibit 29 for identification is 16 MFI0281887, a one-page document titled 17 MFI Animal Welfare Program Summary. 18 Have you seen this document before to 19 your recollection, sir? 20 A. No, I haven't seen this particular 21 document. 22 Q. Okay. Now, was there a time during your 23 employment at Michael Foods that the various 24 components of what I will call the 25 beak-trimming policy were in effect where it</p>
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<p>1 BY MR. RAYLE: 2 Q. How did Michael Foods -- how did -- who 3 at Michael Foods made the supply decisions 4 with respect to how many shell eggs they would 5 put on the market? 6 A. The sales department sells the product so 7 they would determine how much product is 8 produced -- how much product is produced. 9 Q. All right. And how much product is 10 produced, the sales department determines 11 that, is that correct? 12 A. They make the sales, so yes, they would 13 determine the volume of output. 14 Q. And as at the time that Michael Foods 15 became active in the animal welfare program in 16 the summer of 2006 who was in charge of sales 17 at Michael Foods? 18 A. Well, there's people in charge of 19 different divisions, general managers of -- 20 Q. Is there any one person that would be on 21 top of that pyramid, so to speak? 22 A. No. 23 Q. How many such persons would there 24 be -- would be involved in making those 25 decisions?</p>	<p>1 says Beak Trimming, and then it has four bulls 2 bullets next to the side of it? 3 A. Would you repeat the question. 4 MR. RAYLE: Restate it. 5 (Whereupon, the court reporter read 6 back the previous question.) 7 MR. RAYLE: By that I mean the four 8 bullets next to Beam Trimming. 9 THE WITNESS: Once we signed on to 10 the certified program, all of these attributes 11 were -- were followed. 12 BY MR. RAYLE: 13 Q. So that would be after the summer of 14 2006 -- 15 A. Yes. 16 Q. -- for a point in time? 17 A. Yes. 18 Q. And then prior to the time you signed 19 onto the program, you being Michael Foods, did 20 you have a beak-trimming policy? 21 A. Yes. 22 Q. What was that? 23 A. To trim the birds 18 days or younger. 24 Q. Okay. Now, there's a reference to: 25 Skilled crews will be used to ensure quality.</p>

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<p>1 Do you see that, sir?</p> <p>2 A. Yes.</p> <p>3 Q. Do you have an understanding what the</p> <p>4 phrase "skilled crews" refers to?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Could you share that with us, please.</p> <p>7 A. To be properly trained to do an</p> <p>8 appropriate job of the trimming.</p> <p>9 Q. So do they have a beak-trimming training</p> <p>10 program at Michael Foods?</p> <p>11 A. Yes.</p> <p>12 Q. Who was in charge of that in the summer</p> <p>13 of 2006?</p> <p>14 A. Each manager of each farm was responsible</p> <p>15 to see to it that the training took place.</p> <p>16 Q. Okay. You can put that aside.</p> <p>17 MR. GREENE: I'll just note for the</p> <p>18 record there is a fax band on Exhibit 29 that</p> <p>19 I assume is not part of the document as</p> <p>20 produced.</p> <p>21 MR. RAYLE: Any time you see a fax</p> <p>22 band that is absolutely correct.</p> <p>23 (Exhibit Number 30 marked for</p> <p>24 identification.)</p> <p>25 BY MR. RAYLE:</p>	<p>1 in May of 2005?</p> <p>2 A. No, it was actually more stringent than</p> <p>3 this. And we were giving the birds more space</p> <p>4 than this document lists and trimming the</p> <p>5 birds at a different timing.</p> <p>6 Q. When you say "this document," you are</p> <p>7 referring to the Gaylord, Minnesota document?</p> <p>8 A. The document that you just produced?</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Then you say --</p> <p>12 MR. RAYLE: Let me hear his answer.</p> <p>13 (Whereupon, the court reporter read</p> <p>14 back the previous question.)</p> <p>15 BY MR. RAYLE:</p> <p>16 Q. When you say "more stringent," you mean</p> <p>17 the policy ultimately adopted by Midwest [sic]</p> <p>18 Foods generally, is that what you're referring</p> <p>19 to?</p> <p>20 MR. GREENE: Objection. I think</p> <p>21 you misspoke when you said Midwest Foods.</p> <p>22 THE WITNESS: I'm sorry. Michael</p> <p>23 Foods.</p> <p>24 MR. GREENE: Can you ask the</p> <p>25 question again.</p>
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<p>1 Q. Exhibit 30 for identification, a</p> <p>2 multi-page document MFI0002008 through to and</p> <p>3 including MFI0002013. And it purports to be</p> <p>4 an email from Mr. Bebee, Tuesday, May 31,</p> <p>5 2005, to Mr. Baker -- Messrs. Baker and</p> <p>6 Catherman, subject Animal Welfare Program.</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Did you prepare this email, sir?</p> <p>10 A. That's what it appears -- it appears to</p> <p>11 be the case.</p> <p>12 Q. And your first sentence is: This</p> <p>13 document is an SOP that could be -- that could</p> <p>14 be used for a welfare program.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And when you use the acronym SOP what</p> <p>18 were you referring to?</p> <p>19 A. Standard operating procedure.</p> <p>20 Q. And then there is a multi-page document,</p> <p>21 next page in, Michael Foods Inc. Egg Products</p> <p>22 Company Animal Well Being Standard Operating</p> <p>23 Procedures, Gaylord, Minnesota. Now, was this</p> <p>24 standard operating procedure in effect at the</p> <p>25 Gaylord, Minnesota farm of Michael Foods Inc.</p>	<p>1 MR. RAYLE: Read it.</p> <p>2 THE COURT REPORTER: "When you say</p> <p>3 more stringent, you mean a policy ultimately</p> <p>4 adopted by Michael Foods?"</p> <p>5 BY MR. RAYLE:</p> <p>6 Q. Was more stringent than the program</p> <p>7 that's attached to this document?</p> <p>8 A. The Gaylord program is a</p> <p>9 customer-specific program that was done for a</p> <p>10 specific customer, Burger King. And we were</p> <p>11 giving the birds 75 inches each and the beak</p> <p>12 trimming was ten days or less.</p> <p>13 Q. Okay.</p> <p>14 A. This one states different figures than</p> <p>15 that.</p> <p>16 Q. When you say "this one" --</p> <p>17 A. This (indicating) document states</p> <p>18 different numbers.</p> <p>19 Q. Different procedures?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And when you refer to the BK</p> <p>22 stuff in the second sentence, you are</p> <p>23 referring to Burger King, is that correct?</p> <p>24 A. Yes, sir.</p> <p>25 (Exhibit Number 31 marked for</p>

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<p>1 identification.)</p> <p>2 BY MR. RAYLE:</p> <p>3 Q. Exhibit 31 for identification is titled</p> <p>4 Response to Wendy's Animal Welfare Comments</p> <p>5 dated June 15, 2002. And the numbers are</p> <p>6 MF10286766 through MF10286768.</p> <p>7 My first question, sir, is whether you've</p> <p>8 seen the original or a copy of this document</p> <p>9 prior to this deposition today?</p> <p>10 A. I don't remember the document.</p> <p>11 Q. Do you recall comments by Wendy's in</p> <p>12 connection with the animal welfare program at</p> <p>13 any time?</p> <p>14 A. I remember discussions that -- I remember</p> <p>15 that we had discussions with Wendy's personnel</p> <p>16 about a proprietary program for them.</p> <p>17 Q. For Wendy's -- specifically Wendy's?</p> <p>18 A. Yes.</p> <p>19 Q. When you say "proprietary program," that</p> <p>20 would be a program that would be deployed only</p> <p>21 in connection with Wendy's, is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall, sir, whether at any time</p> <p>24 after Michael Foods became active in the</p> <p>25 animal welfare program in the summer of 2006,</p>	<p>1 portion of this document. Do you recognize in</p> <p>2 whose hand those jottings were written?</p> <p>3 A. (Reviews document.) They appear to be</p> <p>4 mine.</p> <p>5 Q. Can you read into the record what is</p> <p>6 being said there, please.</p> <p>7 A. Can I read into the record?</p> <p>8 Q. Yeah. In other words, would you recite,</p> <p>9 read your -- translate your handwriting for</p> <p>10 us, if you would?</p> <p>11 A. Terry's, Monday a.m. 1/16/06, Ken's</p> <p>12 include some of Terry's and myself comments.</p> <p>13 Q. Now, the document recites -- it's divided</p> <p>14 into several paragraphs. But it starts out:</p> <p>15 Our Mission Statement.</p> <p>16 Do you see that, sir?</p> <p>17 A. Yes.</p> <p>18 Q. Who prepared -- first of all, who</p> <p>19 prepared this document?</p> <p>20 A. I don't recall.</p> <p>21 Q. Who at Michael Foods determined what the</p> <p>22 mission statement that's mentioned in the</p> <p>23 document, what that mission statement would</p> <p>24 be, who made that -- who was the decider on</p> <p>25 that issue?</p>
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<p>1 whether any time after that time you attended</p> <p>2 any meetings at which the effect of the animal</p> <p>3 welfare program on retail prices of shell eggs</p> <p>4 was discussed?</p> <p>5 A. I don't remember attending any such</p> <p>6 meetings.</p> <p>7 Q. Do you recall having any conversations</p> <p>8 with anyone along those lines independent of</p> <p>9 the meeting?</p> <p>10 A. No.</p> <p>11 (Phone ringing.)</p> <p>12 THE VIDEOGRAPHER: Off record.</p> <p>13 The time is 4:50.</p> <p>14 (Recess.)</p> <p>15 THE VIDEOGRAPHER: Back on the</p> <p>16 record.</p> <p>17 The time is 4:52.</p> <p>18 (Exhibit Number 32 marked for</p> <p>19 identification.)</p> <p>20 BY MR. RAYLE:</p> <p>21 Q. Exhibit 32 for identification is titled</p> <p>22 Michael Foods Inc. Animal Welfare,</p> <p>23 MF10028203 [sic] through MF10028207. And my</p> <p>24 first question, sir, is -- there are</p> <p>25 handwritten jottings in the upper right-hand</p>	<p>1 A. I don't know.</p> <p>2 Q. Now, can you tell us -- and I'm speaking</p> <p>3 to the whole document, all of it, every part</p> <p>4 of it, can you tell us the persons who</p> <p>5 were -- who were involved in the preparation</p> <p>6 of this document?</p> <p>7 A. No, I can't.</p> <p>8 Q. Can you tell us whether this document</p> <p>9 was -- at any time was disseminated to your</p> <p>10 employer's employees?</p> <p>11 A. No.</p> <p>12 Q. You can't tell us whether it was.</p> <p>13 A. No, I can't tell you.</p> <p>14 Q. Okay.</p> <p>15 (Exhibit Number 33 marked for</p> <p>16 identification.)</p> <p>17 BY MR. RAYLE:</p> <p>18 Q. Exhibit 33 for identification purports to</p> <p>19 be a letter to Dr. Dutton from a Mr. Dan</p> <p>20 Meagher. And the identification numbers are</p> <p>21 MF10074218 through MF10074219 and the date is</p> <p>22 June 19, 2006.</p> <p>23 And my first question is: Who, if you</p> <p>24 know, is Mr. Dan Meagher?</p> <p>25 A. I don't know him.</p>

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<p>1 Q. There is a reference to Mr. Meagher being 2 the chairman of something called the further 3 processor division. 4 Do you have any idea what that division 5 is or means? 6 A. There is a further processing division of 7 UEP. 8 Q. UEP? 9 A. Yes. 10 Q. And there are copies -- where it says: 11 Identical letters are sent to the following 12 individuals, and then we have individuals of 13 Moark, Egg Safety Center, Rose Acre Farms, 14 Rembrandt Enterprises and ISE. 15 Do you see that? 16 A. I do. 17 Q. Have you seen an original or a copy of 18 this letter prior to today? 19 A. No. 20 (Exhibit Number 34 marked for 21 identification.) 22 BY MR. RAYLE: 23 Q. Exhibit 34 for identification, sir, is 24 titled Executive Summary marked Highly 25 Confidential, MFI0271656. I'll ask you if</p>	<p>1 Michael Foods in the summer of 2006, if you 2 know? 3 A. That would be two. 4 Q. Who would -- one would be Dr. Dutton? 5 A. Yes. 6 Q. And who would the other one be, sir? 7 A. Dr. Jeff Erickson. 8 MR. RAYLE: I think I'm finished, 9 but I would like to confer with my colleagues 10 for a moment. 11 MR. DAVIS: I'd like to move to 12 strike all testimony with regard to the former 13 exhibit as an incomplete exhibit and cause 14 misleading testimony. 15 MR. RAYLE: Noted. 16 THE VIDEOGRAPHER: Off record. 17 The time is 4:59. 18 (Recess.) 19 MR. RAYLE: The indirect purchaser 20 plaintiffs have no further questions at this 21 time of this witness. 22 THE VIDEOGRAPHER: Back on the 23 record. 24 The time is 5:32. 25 MR. GREENE: The plaintiffs</p>
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<p>1 you've seen the original or a copy of this 2 document prior to today? 3 A. I don't recall this document. 4 Q. Let me just make sure I'm clear. You 5 don't recall whether you've seen this document 6 prior to today, is that correct? 7 A. That's correct. 8 (Exhibit Number 35 marked for 9 identification.) 10 BY MR. RAYLE: 11 Q. Exhibit 35 is UE0368463 titled Ad Hoc 12 Scientific Advisory Committee. And it lists 13 the members, one of whom is Dr. Rich Dutton, 14 Michael Foods. And my question is: Was 15 Dr. Rich Dutton a member of the ad hoc 16 scientific advisory committee at any time? 17 A. He was supporting different committees. 18 I don't know the timing of this specifically 19 and would have to check dates -- 20 Q. Uh-huh. 21 A. -- and records. 22 Q. Did Michael Foods employ more than one 23 veterinarian? 24 A. Yes. 25 Q. How many veterinarians were employed by</p>	<p>1 finished their questioning. Any of the 2 counsel on the phone have any questions on 3 redirect? 4 MR. DAVIS: This is Evan Davis. I 5 have one to two questions about one document. 6 MR. ARANOFF: Okay. 7 MR. GREENE: Go ahead, Evan. 8 MR. DAVIS: It's Exhibit 27. 9 MR. GREENE: We're on. 10 The witness has Exhibit 27 in front 11 of him. 12 13 EXAMINATION 14 15 BY MR. DAVIS: 16 Q. Mr. Bebee, my name is Evan Davis from 17 Pepper Hamilton. I represent United Egg 18 Producers and United States Egg Marketers. I 19 will make this extremely brief. 20 If you look on Exhibit 27, you were asked 21 about a bullet point near the bottom: All are 22 concerned about cheating if the whole industry 23 does not participate. 24 Do you see that line? 25 A. Yes.</p>

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<p>1 Q. When you reference cheating, are you</p> <p>2 referring to a concern about producers selling</p> <p>3 non-certified eggs and labeling those eggs as</p> <p>4 certified?</p> <p>5 MR. ARANOFF: Objection.</p> <p>6 THE WITNESS: That is what I meant</p> <p>7 to get across, yes.</p> <p>8 BY MR. DAVIS:</p> <p>9 Q. The concern that these eggs would be</p> <p>10 mislabeled?</p> <p>11 MR. ARANOFF: Objection.</p> <p>12 THE WITNESS: Yes.</p> <p>13 MR. DAVIS: That's all that I have.</p> <p>14 Thank you, Mr. Bebee.</p> <p>15 MR. GREENE: I don't have any</p> <p>16 questions. The witness will read and sign.</p> <p>17 MR. ARANOFF: Okay.</p> <p>18 THE VIDEOGRAPHER: This concludes</p> <p>19 the videotaped deposition of Tim Bebee</p> <p>20 consisting of four tapes.</p> <p>21 We are off the record at 5:34.</p> <p>22 (Deposition concluded at 5:34 p.m.)</p> <p>23 *****</p> <p>24</p> <p>25</p>	<p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2 I, TIMOTHY BEEBE, do hereby certify</p> <p>3 that I have read the foregoing transcript of my</p> <p>4 testimony, and further certify that it is a true</p> <p>5 and accurate record of my testimony (with the</p> <p>6 exception of the corrections listed below):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 80%;">Correction</th> </tr> </thead> <tbody> <tr><td>8</td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> </tbody> </table> <p>22</p> <p style="text-align: center;">TIMOTHY BEEBE</p> <p>23 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>24 THIS ____ DAY OF _____, 20__.</p> <p>25 (NOTARY PUBLIC) MY COMMISSION EXPIRES: _____</p>	Page	Line	Correction	8			9			10			11			12			13			14			15			16			17			18			19			20			21		
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<p style="text-align: right;">299</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 STATE OF MINNESOTA)</p> <p>4) ss.</p> <p>5 COUNTY OF HENNEPIN)</p> <p>6</p> <p>7 I hereby certify that I reported the</p> <p>8 deposition of Timothy Bebee on July 18, 2013 in</p> <p>9 Minneapolis, Minnesota, and that the witness was by</p> <p>10 me first duly sworn to tell the whole truth;</p> <p>11</p> <p>12 That the testimony was transcribed by me</p> <p>13 and is a true record of the testimony of the</p> <p>14 witness;</p> <p>15</p> <p>16 That the cost of the original has been</p> <p>17 charged to the party who noticed the deposition,</p> <p>18 and that all parties who ordered copies have been</p> <p>19 charged at the same rate for such copies;</p> <p>20</p> <p>21 That I am not a relative or employee or</p> <p>22 attorney or counsel of any of the parties, or a</p> <p>23 relative or employee of such attorney or counsel;</p> <p>24 That I am not financially interested in the</p> <p>25 action and have no contract with the parties,</p> <p>attorneys, or persons with an interest in the</p> <p>action that affects or has a substantial tendency</p> <p>to affect my impartiality;</p> <p>That the right to read and sign the</p> <p>deposition transcript by the witness was reserved.</p> <p>WITNESS MY HAND AND SEAL THIS 30th day of</p> <p>July, 2013.</p> <p>Dana S. Anderson-Linnell</p> <p>Notary Public, Hennepin County, MN</p> <p>My commission expires 1/31/2015</p>																																														

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